United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX



75.7079 United States Court of Appeals For the Second Circuit

HOWARD BERSCH,

Plaintiff-Appellee,

against

DREXEL FIRESTONE, INC., DREXEL HARRIMAN RIPLEY, BANQUE ROTHSCHILD, HILL SAMUEL AND CO., LIMITED, GUINNESS MAHON & Co., LIMITED, PIERSON, HELDRING & PIERSON, SMITH, BARNEY & Co. INCORPORATED, J. H. CRANG AND CO., INVESTORS OVERSEAS BANK LIMITED,

Defendants,

ARTHUR ANDERSEN & Co., I.O.S., Ltd., and Bernard Cornfeld, Defendants-Appellants.

Appeal from the United States District Court for the Southern District of New York

APPELLANTS' APPENDIX VOLUME II OF THREE VOLUMES

(Pages 191A to 208A-116)

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

(32) The Court: Let's not have any more nonsense about it. You have proceeded against Rothschild; you have proceeded against the underwriters. You did so promptly. You took no proceedings against Cornfeld although you could have proceeded against him on substituted service.

I don't know whether he has any assets here or not, or whether you could discover it, but you didn't have to have that, because under that statute that you brought you can serve him where he can be found, and you certainly could find an admission that he was a United States citizen, and you could have taken steps. You didn't do it

This involved a matter not of ten cents, but there are a number of serious questions involved in this case, not only a question as to jurisdiction, but to the extent of your jurisdiction; if you do have jurisdiction over the person, the (33) question of jurisdiction over the subject matter.

Have you a claim that you can assert here in the United States on any sales which were made entirely abroad, or are you limited to those sales which were made within the territorial jurisdiction of this country? Have you jurisdiction in this country of sales which were made up in Canada or purchases? That presents a very serious question.

The Court: You are not dealing here with ten cents or a few dollars. Do you dispute that you seek to represent a hundred thousand purchasers of IOS stock throughout the world?

(34) Mr. Silverman: No, Judge. There has been preliminary finding that this can be a class action, that the court has jurisdiction.

The Court: I am not worried about whether it can be a class action or not. It's a question of the extent of the class.

Mr. Silverman: The extent of the class and the jurisdiction. Judge Frankel found that we could represent every purchaser, and that there was jurisdiction.

The Court: Did he sign an order so defining his class? As I recall, he didn't.

Mr. Silverman: He said everybody who purchased throughout the world, at least at this time.

The Court: He didn't enter any class order. He defined no class.

Mr. Marks: He specifically deferred that to your Honor. The Court: Therefore, what he said was dictum.

1807.16

Notice of Motion of Bernard Cornfeld to Dismiss Complaint UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

HOWARD BERSCH,

Plaintiff,

-against-

DREXEL FIRESTONE, INC., et al.,

Defendants.

NOTICE OF MOTION

71 Civ. 5373 (RLC)

SIRS:

PLEASE TAKE NOTICE that upon:

Im Zuni

- 1. The annexed affidavits of Leonard Marks, Esq., sworn to the 14th day of February, 1974 and Diethild Gainer, sworn to the 6th day of December, 1973, and exhibits thereto;
- 2. The affidavits of Walter W. Ruegger, sworn to the 28th day of April, 1972, Bertram D. Coleman, sworn to on or about the 28th day of April, 1972, Murray J. Howe, sworn to the 28th day of April, 1972, Kenneth L. Beaugrand, sworn to the 15th day of May, 1972, Edward J. Ross, sworn to the 31st day of October, 1973, John Godfray Le Quesne, sworn to the 28th day of September, 1973, Jan-Peter De Wall, sworn to in or about October, 1973, Peter Haftner, sworn to the 5th day of October, 1973, Jacques Henri Warmelink, sworn to the 26th day of October, 1973, Peter Grandin Gallichan, sworn to the 7th day of November, 1973, Hugh Meyer Sassoon, sworn to the 7th day of November, 1973, Charles Jolibois, Jr., sworn to the 25th day of October, 1973, Ercole Graziadei, sworn to the 27th day of November, 1972, Anthony F. Phillips, sworn to the 30th day of October, 1973, Gilbert S. Bennett, sworn to the 30th day of October, 1973,

Frederick McCann, sworn to the 5th day of December, 1972, George P. Bischof, sworn to the 31st day of October, 1973, Jerome Istel, sworn to the 23rd day of October, 1973;

- 3. The depositions of Bertram Coleman (April 5, 1973), Grayson Murphy (May 2, 1973), Murray J. Howe (June 6, 1973), Hugh Knowlton, Jr. (June 19, 1973), Frederick M. Werblow (June 20, 1973), Wilbur S. Duncan (July 17, 1973), and Walter W. Ruegger (August 29, 1973);
 - 4. Plaintiff's Answers to Interrogatories; and,
- 5. All of the other papers and prior proceedings herein; the undersigned will move this Court before the Hon. Robert L. Carter, at the United States Court House, Foley Square, in the Borough of Manhattan, City, County and State of New York, at a date, time and place to be fixed by the Court in April, 1974, for the following relief:
- 1. Pursuant to Rules 12(b) and 41(b), Fed.R.Civ.P., for an order dismissing the complaint (a) for lack of personal jurisdiction over defendant Bernard Cornfeld ("Cornfeld"), (b) for failure to prosecute the action against Cornfeld for more than seventeen months, and (c) for lack of subject matter jurisdiction or upon the ground of forum non conveniens, or, alternatively,
- 2. Pursuant to Rule 23(c)(1), Fed.R.Civ.P., for an order amending the conditional class action determination of Hon.

 Marvin L. Frankel of June 28, 1972, to provide:
 - (a) that this suit may not be maintained as a class action; or,
 - (b) that foreign nationals who purchased I.O.S. Ltd. ("IOS") stock outside the United States be

excluded from the purported class and the class be limited to either (i) United States residents who purchased IOS stock or (ii) United States citizens wherever resident who purchased IOS stock; and

3. Granting such other, further or different relief as to the Court may seem just and proper.

Dated: New York, New York February 15, 1974

Yours, etc.

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Affidavit of Leonard M. Marks in Support of Motion to Dismiss Complaint

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

HOWARD BERSCH,

Plaintiff,

-against-

DREXEL FIRESTONE, INC., et al.

AFFIDAVIT

71 Civ. 5373 (RLC)

Defendants.

STATE OF NEW YORK) : ss.:
COUNTY OF NEW YORK)

LEONARD M. MARKS, being duly sworn, deposes and says:

- 1. I am a member of Gold, Farrell & Marks, attorneys for defendant Bernard Cornfeld in this action. This affidavit is submitted in support of Mr. Cornfeld's motion:
 - (1) pursuant to Rules 12(b) and 41(b) Fed.R.Civ.P. for an order dismissing the complaint:
 - (a) for lack of personal jurisdiction over the defendant.
 - (b) for failure of the plaintiff to prosecute the action against the defendant Cornfeld for 17 months, and
 - (c) for lack of subject matter jurisdiction or upon the ground of forum non conveniens or, alternatively,
 - (2) pursuant to Rule 23(c)(1) Fed.R.Civ.P. amending the conditional class action determination of Hon. Marvin E. Frankel of June 28, 1972, to provide (a) that this suit may

not be maintained as a class action or (b) that foreign nationals who purchased IOS stock outside the United States (approximately 99,600 people) be excluded from the purported class, and that the class be limited to either (i) United States residents who purchased IOS stock (approximately 40 people) or (ii) United States citizens wherever resident who purchased IOS stock (approximately 400 people).

PRELIMINARY STATEMENT

- 2. The complaint in this action seeks damages of over \$110,000,000 on behalf of 100,000 purchasers, virtually all of whom are foreign nationals, who bought IOS stock at three public offerings outside the United States in 1969.
- 3. The complaint was filed on December 9, 1971. The plaintiff served process promptly on ten defendants, but never served two named defendants Bernard Cornfeld and I.O.S., Ltd. ("IOS"). Mr. Cornfeld, an American citizen who has resided : Europe for many years, was formerly President and Chairman of the Board of IOS. IOS is a Canadian corporation, registered and head-quartered in Geneva, whose stock has never been registered or traded on any American exchange. It has been actively traded over several foreign exchanges and was registered with all Canadian Securities Commissions.
- 4. Plaintiff actively litigated the case for seventeen months against the ten defendants which were served (nine underwriters and Arthur Andersen & Co., an accounting firm). During this time, plaintiff noticed seven depositions of the defendants and others, engaged in extensive document discovery and motion practice, and obtained a conditional class action determination

subject to later reconsideration. Since he had not been served, Mr. Cornfeld did not participate in any of these proceedings, or even defend the class action motion which affected his rights directly.

- the plaintiff on May 15, 1973 -- the day after Mr. Cornfeld was incarcerated in Switzerland -- when substituted service was purportedly made upon him in California in the manner least calculated to provide him with actual notice. Throughout the preceding 17 months, Mr. Cornfeld was readily available, and never avoided service. Mr. Cornfeld could easily have been served at his homes in France or Switzerland (as other European defendants were served), or in the United States while on trips to New York and California. He has been a well known person for several years, and his whereabouts have always been easily ascertainable.
- 6. On September 20, 1973, plaintiff obtained a summary default order against Mr. Cornfeld, without any notice to him or to Mr. Cornfeld's representatives, who had advised plaintiff's attorney that Mr. Cornfeld was being held without bail virtually incommunicado in a Swiss prison, and who had requested notice of any further proceedings. At a hearing on December 5, 1973, Judge Sylvester J. Ryan entered an order vacating the default in its entirety. By order of December 20, 1973, Judge Ryan provided for the submission of this motion on Mr. Cornfeld's behalf.
- 7. Mr. Cornfeld is still incarcerated in Switzerland without trial. Bail was completely denied to him by Swiss authorities until January of this year. Bail was then fixed at \$2.4 million and subsequently lowered to \$1.6 million. To date, Mr. Cornfeld has been unable to post this amount of bail. The extraordinary problems of American counsel's obtaining access to

his secretary, Monika Hallermeyer. The information regarding the status of the proceedings pending against Mr. Cornfeld in Switzerland on behalf of purchasers of IOS stock -- which is critically important in determining the propriety of class action treatment and class membership in the present case -- is based upon conferences with Messrs. Pierre Sciclounoff and Dominique Poncet, Swiss counsel for Mr. Cornfeld.

LACK OF PROSECUTION AND THE PURPORTED SERVICE OF THE COMPLAINT ON MR. CORNFELD

- 9. On May 15, 1973, in Los Angeles, 17 months after the action had been filed, and after extensive discovery and motion practice had been completed -- plaintiff purported to serve Mr. Cornfeld in California at a time when he was imprisoned in Geneva, Switzerland (as every newspaper had reported) and was being hald virtually incommunicado.
- The Deputy United States Marshal who attempted to serve Mr. Cornfeld on May 15, went to 1100 Carolyn Way in Beverly Hills, Los Angeles. This house is owned by Grayhall, Inc. and leased to World Film Services, Inc., which permitted Mr. Cornfeld to use the premises while in Los Angeles. Mr. Cornfeld was not present, or even in the country at the time.
 - 11. Monika Hallermeyer, Mr. Cornfeld's secretary, has

provided his schedule for the period preceding the purported service of process in California on May 15. I am advised that from April 27, 1973, until May 9, 1973, Mr. Cornfeld was at home in London, which he has leased since 1968. On May 9, Mr. Cornfeld went to him home at Chateau Pelly near Seyssel, France, which he has owned for 8 years, where he stayed through May 12. On May 13, Mr. Cornfeld arrived in Geneva where he stayed at 218 Route de Lausanne (Villa Elma) where he has resided for extensive periods of time during the past 8 years. On May 14, he was arrested, and has been held at St. Antoine's Prison in Geneva since that date.

- Los Angeles address with Miss Diethild Gainer, a German citizen permanently resident in Switzerland, who was vacationing in California for a brief period, with an American tourist visa. The Marshal's return is annexed hereto as Exhibit A. Miss Gainer's affidavit concerning service is also annexed.
- ported service was invalid. Mr. Cornfeld is not a resident of California. Mr. Cornfeld is an American citizen permanently resident abroad, as he has declared in federal income tax returns for many years. He has filed United States non-resident tax returns each year since 1964 as a resident of Switzerland. Mr. Cornfeld advised me that he has never voted in California, never paid taxes in California, and never held a California driver's license. The only driver's license which Mr. Cornfeld possesses is his Swiss driver's license, which he obtained in 1965. A copy of this license is annexed hereto as Exhibit B.
 - 14. Mr. Cornfeld advised me that he has lived in witzer

twelve (12) years of residing in that country and has paid Swiss taxes for many years. His mother, Sophie Cornfeld, has resided in Geneva since 1965 at Mr. cornfeld's home, and maintains a permanent Swiss residence permit. Mr. Cornfeld's home in Switzer-land is listed as his residence address in each of the three prospectuses referred to in the complaint in this action.

- 15. Leaving the summon and complaint with a temporary visitor in California was ineffective service. No copy of the summons and complaint was mailed by the marshal to Mr. Cornfeld, a procedure which is absolutely required under the applicable state statute for substituted service outside the state where the district court sits. New York Civil Practice Law & Rules §308. Moreover, Rule 4(b), Fed.R.Civ.P., if applicable, requires that the summons be served at the defendant's "dwelling house or usual place of abode with some person of suitable age and discretion then residing therein." Clearly, a California house is not the "dwelling place or usual place of abode" of a person permanently resident abroad and in jail in a foreign country at the time of the purported service. In addition, Miss Gainer, a tourist on a short vacation in the area was not "residing" in a place, merely by staying there briefly. The marshal made no attempt to ascertain whether the recipient of the summons was a suitable person. He did not even inquire of Miss Gainer as to whether she resided at the location (which she did not). He merely asked her to leave the documents for Mr. Cornfeld to await his return -- a return which has still not occurred.
- 16. Not only was the purported service invalid, but plaintiff has offerred no excuse for his failure to even attempt service of process on Mr. Cornfeld between December 9, 1971, when this suit was first filed, and May 15, 1973, when purported

service was first attempted. Mr. Cornfeld advised me that on numerous occasions during that lengthy period, he was available for substantial periods at his European homes and that he was also available in New York and California. Mr. Cornfeld stated that he knew of no attempted service and never avoided process. The court records contain no indice on of any prior attempt at service.

- 17. Several recent cases have dismissed complaints pursuant to Rule 41(b) Fed.R.Civ.P. for lack of prosecution where plaintiffs have chose to wait for substantial periods of time before serving one defendant while actively litigating against other defendants in the same action. Mr. Cornfeld is at a severe disadvantage in participating at this juncture in this \$110,000,000 litigation. Not only have substantial steps been taken without his participation, but the delay has prejudiced the preparation of his defense and his ability to assist counsel.
- the fact that his addition as a defendant was probably an after-thought. He is the last-named defendant in the case, and the only individual defendant named at all. Although he was President of IOS, he took no direct part in the public offerings or the preparation of the prospectuses. Other top principals who sold large blocks of IOS shares in the offerings, and who took an active part in their effectuation, are not named. Clearly, plaintiff regards the action against the underwriters as the main part of the case, and his lack of prosecution against Mr. Cornfeld is apparent.

LACK OF SUBJECT MATTER JURISDICTION

19. The basic issue of subject matter jurisdiction in this case is whether an American court has or should accept

jurisdiction over a purported 100,000 member class action, based on the sale of stock almost entirely to foreigners outside the United States, of a Canadian corporation unlisted on any American stock exchange. Judge Frankel specifically noted in his conditional class action determination that he was leaving open for resolution "whether foreign purchasers will be entitled to invoke the protections and sanctions of American securities laws."

Opinion of Judge Frankel, June 28, 1972, p. 5, annexed hereto as Exhibit C.

- 20. More recently, at the hearing vacating the default entered against Mr. Cornfeld, Judge Ryan stated:
 - "... [T]here are a number of serious questions involved in this case, not only a question as to jurisdiction, but to the extent of your jurisdiction; if you do have jurisdiction over the person, the question of jurisdiction over the subject matter.

"Have you a claim that you can assert here in the United States on any sales which were made entirely abroad, or are you limited to those sales which were made within the territorial jurisdiction of this country? Have you jurisdiction in this country of sales which were made up in Canada or purchases? That presents a very serious question." (Transcript of hearing of December 5, 1973, pages 32 to 33, annexed hereto as Exhibit D.)

offerings took place outside the United States. Lack of subject matter jurisdiction is particularly clear with regard to the activities of Mr. Cornfeld, who lived and worked in Geneva throughout the period alleged in the complaint. Mr. Cornfeld advised me that he had little or nothing to do with the prospectuses concerning the offerings of IOS stock. He stated that he never met with the accountants or lawyers who prepared the prospectuses. He did not participate in the preparation or dissemination of the prospectuses. Mr. Cornfeld stated that he signed the prospectuses

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in Geneva. He further stated that he did not participate in any arrangements with the underwriters, with the exception of one meeting which occurred in Geneva. This meeting was limited exclusively to Mr. Cornfeld's efforts to convince the underwriters to raise the proposed offering price to \$10 per share. Mr. Cornfeld recalls no other contact with the underwriters. He stated that he knew that the prospectuses had been prepared by Shearman & Sterling and the leading underwriters in the various offerings, including Drexel, Harriman, Ripley, Inc. and that Arthur Andersen & Co. had performed a detailed financial analysis relating to the prospectuses. Mr. Cornfeld stated that he had not interfered in any way with the performance of the lawyers, investment bankers and accountants, and that they had received full and complete cooperation, including complete access to IOS books and records.

- 22. Mr. Cornfeld denied the allegations in the complaint that charge him with "touting" IOS stock. He stated that he did not recall giving any talks or speeches in the United States in which there was any mention of IOS going public, and that he did not engage in any promotion of IOS stock in the United States or elsewhere. Mr. Cornfeld stated that at the time of the IOS offerings he was in fact heavily engaged in other business matters on behalf of IOS.
- 23. The seven depositions conducted by plaintiff to date contain virtually no references to any activities of any kind by Mr. Cornfeld. There are no references to his having done anything in the United States with regard to the offering of IOS stock. Indeed, the depositions confirm that Mr. Cornfeld's contact with those preparing the offerings was minimal, and occurred entirely in Switzerland. The prospectuses explicitly state that

the offerings were not registered pursuant to or covered by American securities laws.

AMENDING OR ALTERING THE CLASS

- 24. The conditional class action determination entered by Judge Frankel was expressly made tentative and subject to review by the Judge to which this case is assigned for all purposes.* Such reconsideration is appropriate now since discovery concerning the jurisdictional aspects of this case has been concluded. Judge Frankel specifically identified the following problems, among others, which were left to be resolved:
 - (1) "[W]hether foreign purchasers will be entitled to invoke the protections and sanctions of American securities laws." (Frankel Memorandum, p. 5);
 - (2) "[W]hether foreign investors . . . will be bound in their own courts by an adverse decision in the instant class action." (<u>Id</u>.);
 - (3) "[B]asic questions affecting the management of the case" including the "key-stone . . . matter of notice" to class members. (Id., pp 6-7)

1. Pending Swiss Proceedings

27. On plaintiff's initial class action/of April 7, 1972 -- more than one year before any service was attempted upon Mr. Cornfeld -- plaintiff's counsel contended that there was no other forum available in which any members of plaintiff's purported world-wide class of 100,000 purchasers of IOS stock could seek relief. Plaintiff's mention of Swiss proceedings against Mr. Cornfeld stated that the action was criminal in nature and that because contingent fees are not permitted in Europe there was no

^{*} Rule 23(c)(1), Fed.R.Civ.P., specifically provides that the court may always reconsider a class action order, in any event.

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likelihood of a class action being brought there. Plaintiff's counsel stated that "there was no way of knowing whether any damages would actually be sought" in the Swiss proceedings. Affidavit of Jewel H. Bjork, April 7, 1972, p. 2, annexed hereto as Exhibit E.

- 26. The information which I have received from Swiss counsel for Mr. Cornfeld demonstrates that plaintiff's description of the Swiss proceedings is inaccurate and misleading. In fact, Swiss proceedings have been initiated by 395 IOS stock purchaser-complainants of many nationalities, including at least 18 Americans, and are being actively litigated against Mr. Cornfeld. Moreover, simplified arrangements have been made in Switzerland for the filing of form complaints by IOS stock purchasers and competent, aggressive Swiss counsel has been retained to represent their interests.
- 27. Annexed hereto as Exhibit F is a circular dated October 18, 1971 on behalf of a committee formed to represent purchasers of IOS stock. This circular states:

"We are now at last in a position to follow through on the investigations commenced last year, in the matter of the defense of the interests of the IOS Swiss employees who have purchased stock in this company.

"The undersigned have formed a Committee for the Defense of the said interests.

"We have submitted the case for examination by an attorney who is specialized, and advise you herewith of criminal suit which he has filed and which we feel defines perfectly the grievances which we can hold against the IOS executives.

"We have now come to the stage where we can file the complaint.

"If you are still minded to go ahead, we shall ask you to fill in the blanks in the herewith complaint, giving your name, first name and address, all exact (page 1), and also the number of shares purchased and the total

price of your purchase (page 4), and, finally, sign the complaint on the last page, then send it direct to Mr. Antoine Hafner, Attorney, 6, rue Bellot, Geneva, who will see that all the complaints are filed together with the Procurator General.

"Please be sure -- as we have arranged with Atty Antoine Hafner -- to pay to him direct your share of the amount required, namely <u>l fr</u>. per share being satisfactory to him.

"On the other hand, Atty Hafner reserves the right to demand payment of supplementary additional fees from our opponents, in case the complaint proves successful.

"We urge you to join us in the filing of this complaint, as we have good reasons and grounds to believe that same will not only lead to a verdict against those responsible, but also to refund of the amounts paid in purchase of the shares. Of course, we are not in a position to guarantee to you this result, but the chances of success seem to us so favorable that it would be regretable to abandon the process now and that we will succeed in seeing that justice is done." (Emphasis added)

- 28. I am also advised that Swiss law permits intervention by civil parties in criminal proceedings, that a judgment against the defendant would include complete damages or reparations for the purchase of IOS stock, and that this relief is being sought on behalf of the complainants in Switzerland. It is particularly noteworthy that both the wide circulation of the form complaint among prospective complainants in Europe and the filing of the Swiss action against Mr. Cornfeld on November 5, 1971, preceded the filing on December 9, 1971 of the purported class action in the present case. Moreover, in contrast to the large number of persons who have joined in the Swiss proceedings, not one single person has sought to join in the present American action.
- 29. I am further advised that an advertisement appeared in Swiss newspapers seeking additional claimants among IOS purchasers. Annexed hereto as Exhibit G is a newspaper article from a Swiss publication which refers to the action filed by IOS stock

purchasers seeking to recover their investments.

- 30. Although Swiss law does not permit class actions per se, the procedures adopted by Swiss counsel, including the simplified filing of form complaints, making arrangements for the compensation of counsel based on the number of shares of IOS stock purchased, and single representation of 395 complainants by one attorney bear a striking resemblance to certain aspects of a class action, and demonstrate the availability of an adequate forum for all plaintiffs. I am informed by Pierre Sciclounoff and Dominique Poncet, Swiss counsel to Mr. Cornfeld, that of the 395 claims that have been processed in the Swiss judicial proceedings against Mr. Cornfeld (all of whom are members of the class plaintiff seeks to represent), 194 are claims of Swiss employees of IOS working in Switzerland or France; that 89 are claims of non-Swiss IOS employees who purchased stock in the public offering while working for IOS in Switzerland; and 112 are claims of non-Swiss employeepurchasers of IOS stock employed by IOS in France. I am further advised that the claimants are of the following nationalities: American, German, Canadian, Australian, Italian, Indian, French, English, Turkish, Spanish, Portuguese, Greek, Chilean, Armenian, Sudanese, Danish, South African, Argentinian, Israeli, Dutch, Algerian and Austrian.
- 31. It is particularly significant that every one of the numerous claims filed in the Swiss proceedings are made on behalf of purchasers who bought IOS stock in only one of the three public offerings that made through Investors Overseas Bank Ltd. an IOS subsidiary which sold to IOS sales representatives, employees, clients and others with a long standing relationship with IOS. The plaintiff in the present action, Howard Bersch, purchased his shares through the same Investors Overseas Bank Ltd.

offering as the hundreds of complainants in the Swiss proceedings. Mr. Bersch did not purchase in either of the other two offerings, although he now seeks to represent everyone who did. Moreover, Mr. Bersch had a long-standing relationship with IOS as did the employee-complainants in the Swiss proceedings; Mr. Bersch previously worked for an IOS subsidiary and was employed by a firm which acted as a business consultant to IOS.

- 32. The complaints in the Swiss proceeding are based upon the same allegedly false and misleading prospectus as the New York proceeding. Annexed hereto as Exhibit H is a copy of the translated form complaint filed in the Swiss proceeding which was previously annexed as an exhibit to the April 7, 1972 affidavit of plaintiff's counsel.
- the Swiss proceeding have been settled after the taking of testimony from the individual claimants by the Swiss presiding official. In addition to the fees received directly from complainants in that action, plaintiff's counsel in Switzerland has received an additional 50,000 Swiss Francs for representing that group. Additional funds will be received by complainants' counsel as part of any further settlement. Thus, plaintiff's suggestion that European counsel would not pursue relief in European courts because of the absence of contingent fees and the cost of litigation is totally unfounded. Substantial numbers of members in plaintiff's purported class have been and are continuing to be adequately represented in another forum by competent counsel who is being well compensated.
- 34. The fact that so many individuals in plaintiff's position, with numerous claims both larger and smaller than his

\$6,000 claim, have participated in the Swiss proceedings, is itself substantial evidence that adequate remedies are available to the members of plaintiff's purported class without burdening an American court with a 100,000 member class action on behalf of foreign nationals on sales of stock of a Canadian corporation which took place almost entirely outside of the United States. It is apparent from the Swiss proceedings to date that citizens of any nationality may invoke the jurisdiction of the Swiss courts to pursue their claims relating to the purchase of IOS stock.

tion for the adjudication of these matters. The complainants, who are almost all Europeans, purchased the stock of a corporation headquartered in Switzerland. They bought their stock in Europe, through European underwriters, or European branches of other underwriters. The prospectuses they saw were generally printed in their native languages, and stated on their face, in effect, that the American securities laws would not afford them any protection. Under these circumstances, the American courts should not become involved in this enormous undertaking, which is a controversy that can be adjudicated in European courts.

2. Res Judicata Problems

dency of the many complaints against Mr. Cornfeld in Switzerland raises substantial problems of res judicata and collateral estoppal for Mr. Cornfeld. Annexed hereto for the convenience of the Court as Exhibit I is a copy of an affidavit from a Swiss lawyer, Peter Haftner. The affidavit has been submitted on behalf of other defendants. Mr. Haftner makes clear that under Swiss law a decision of an American court in this purported class action

would not be binding in Switzerland if class members did not affirmatively "opt-into" the class and agree to be bound by the American determination. Even if the foreign purchasers of IOS stock were forced to opt-in to the American proceedings in order to participate — a practice which appears to be prohibited by Rule 23* — Mr. Haftner indicates that Swiss courts might still decline to apply the doctrine of res judicata because class actions are not recognized in Switzerland. This problem was recognized by Judge Frankel, who questioned whether foreign investors would be bound in their own courts by an adverse decision in an American class action, and stated that the defendants here are entitled to a complete victory — including the principles of res judicata — if : accessful in their defense.

37. This problem is particularly serious for Mr. Cornfeld if, as expected, the Swiss proceedings proceed to judgment before this case. The plaintiff here could then claim factual collateral estoppel if Mr. Cornfeld loses in Switzerland, but not be bound if Mr. Cornfeld wins, because plaintiff is not a party to the Swiss proceedings.

3. Manageability: Class Size; Language; Notice; Foreign Law

38. It is also apparent that plaintiff's purported class action would be totally unmanagable. Plaintiff's asserted class consists of over 100,000 persons. At least 99.5% of the purported class are foreign citizens and residents who purchased IOS stock in countries throughout the world (except the United States). It

^{*} Memorandum of Law of defendants Banque Rothschild and Smith, Barney & Co., Incorporated, October 31, 1973, pp. 29-32; Memorandum of Law of Drexel Group defendants, October 31, 1973, pp 33-38.

is estimated that plaintiff's class would encompass as many as one hundred countries, and citizens speaking twenty-five languages or more. Locating and notifying purchasers of IOS stock five years ago who are scattered around the globe would pose insurmountable problems. It is obvious that notices would have to be sent in more than two dozen languages. In the Swiss proceedings alone, claims have been filed by nationals of the following countries: United States, Germany, Canada, Australia, Italy, India, France. United Kingdom, Turkey, Spain, Portugal, Greece, Chile, The Sudan, Denmark, South Africa, Argentina, Israel, The Netherlands, Algeria and Austria. The Drexel, Harriman underwriting included more than 120 underwriters offering shares in Australia, the Bahamas. Belgium, Finland, France, Germany, Japan, Luxembourg, The Netherlands, Norway, Sweden and the United Kingdom. Moreover, the whole American concept of a class action is unknown in most other countries in the world, as is demonstrated by the affidavits submitted by foreign lawyers from France, England, Germany, Italy and Switzerland on behalf of other defendants. Thus, for example, a Frenchman who purchased IOS shares in France would have to receive a notice in French concerning ar American court action of a kind that he has never before heard about and which is unknown to his system of law, and will be asked to make an intelligent choice concerning his participation when there is substantial doubt that his actions would even be held to be binding by a French court, regardless of the result here. Such a class action would also enmesh an American court in considering the relevancy of, and applying the laws and policies of as many as one hundred different nations whose citizens purchased IOS stock in their own countries -- not in the United States. Thus, the purchase of IOS stock by a German investor in Germany from a German underwriter would probably be governed by German law which has the

most substantial contact with the transaction. Multiplied one hundredfold the application of foreign law would present an American court with hopelessly complex issues. Indeed, the complaint's broad invocation of "pendent jurisdiction" (¶1) in addition to American securities law claims would compound the choice of law problems facing this Court.

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- that American securities law governed their transactions. Nor were those laws designed to apply to sales of Canadian stock to foreign nationals abroad. In fact, the prospectuses in question contain the express language on their first page: "The common shares offered by this prospectus are not registered under the United States Securities Act of 1933 and are not being offered in the United States of America or any of its territories or possessions of any areas subject to its jurisdiction . . ." Imposing American securities law under these circumstances would constitute an unwarranted interference with international contracts between foreign buyers and sellers.
- 40. Moreover, substantial problems would be encountered by the fact that many foreigners purchased IOS shares through foreign banks so that identification of the actual purchasers would be difficult since the shares are held in the equivalent of street name, and numerous foreign banks are subject to laws regarding the confidentiality of their clients.

4. Claims of Touting an Market Priming

41. All of the foregoing points to the inescapable conclusion that this suit should not proceed as a class action. The complaint itself supports this conclusion. The complaint goes

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beyond the offering prospectuses and specifically alleges that the purported class was defrauded as follows:

"10 (e) Various IOS officials engaged in violations of the antifraud provisions of the National Securities Laws, particularly "gun-jumping" and "market priming." During the months preceding the IOS Public Offering, these officials, including defendant Cornfeld, touted IOS' prospects at press conferences, in brochures, at meetings of financial analysts' societies and on television.

* * *

- "16. In the months prior to a contemplated public offering, an issuer should and usually does maintain a well-guarded silence. The purpose of this practice is to prevent excitement for a public offering based on chance remarks or incomplete brochures or pamphlets. IOS and its senior officers, prior to and in preparation for the public offering, made glowing statements concerning IOS and its future. IOS was referred to as 'the most important force in the free world' and it was often estimated that IOS, by 1975, would have \$15 billion under its management.
- "17. Defendants IOS and Cornfeld knowingly and wilfully committed the aforedescribed fraudulent and deceptive acts . . .
- "18 (b) The participating Underwriters knew that defendant IOS and its senior officers had engaged in 'gun jumping' and 'market priming' activities. By participating in the IOS Public Offering with knowledge of these facts, they aided and abetted the defendants IOS and Cornfeld in their scheme to defraud the class." (Emphasis added)
- that the 100,000 member class was defrauded by the fact that defendant Cornfeld and others "touted" IOS and its stock in press conferences, on television, in speeches and brochures. Such claims are particularly ill-suited to class action treatment since they raise substantial questions concerning which members of the purported 100,000 member class heard or received the alleged "touting" statements, which relied upon them, and the like. This problem is compounded by the fact that the purchasers are spread among numerous countries, speak different languages and obviously

did not receive or hear the same alleged statements. Proof of reliance, materiality and causation would have to be received from each individual class member since the alleged false oral and written statements upon which plaintiff claims the class relied were disseminated throughout the world in various forms and were not standardized.

- 43. Numerous cases gathered in the accompanying memorandum have denied class action status in cases where alleged "touting" statements or misrepresentations were not standardized, and were made unequally to members of the purported class.
 - 5. Plaintiff Is Not Typical Or Representative Of The Class
- 44. Finally, Howard Bersch, the sole named plaintiff, is not typical or representative of the 100,000 class members he wishes to represent. First, Mr. Bersch purchased under only one of the three public offerings of IOS stock, that of Investors Overseas Bank Ltd., whose sales were made to IOS employees and those closely associated with the company. He had nothing to do with the offerings of the Drexel, Harriman group or the J. H. Crang offering which were made to members of the general public, and he is in no position to represent purchasers at those two offerings. 395 purchasers under the same offering as Mr. Bersch -- all purported members of his class -- are already represented in Swiss proceedings. Second, Mr. Bersch's answers to interrogatories demonstrate that he did not rely on the prospectuses he claims to be false and misleading. Hence he is not in any position to represent those who it is alleged so relied. In his answer to interrogatory number 23, plaintiff states that he purchased his shares on September 3, 1969, and forwarded his subscription and

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payment check to Geneva. The prospectuses, however, were dated September 24, 1969 (Exhibits B, C and D to affidavit of Joan T. Harnes, sworn to April 7, 1972), and thus were not available to Mr. Bersch at the time he acknowledges making his purchase. Under these circumstances, Mr. Bersch is not in any position to represent those who purchased stock in the IOS public offerings "in reliance upon prospectuses which were false and misleading . . . and were damaged thereby." Complaint, ¶5.

- 45. Moreover, Mr. Bersch is hardly typical of the 100,000 IOS purchasers he claims to represent, who are almost all foreigners who purchased as members of the general public. In his answers to interrogatories (Number 9), Mr. Bersch acknowledges working directly for Robert Sutner when he made his purchase. Mr. Sutner was both a director of IOS and one of the major selling shareholders in the public offering. Thus, Mr. Bersch's knowledge of the workings of IOS makes him atypical of the purported class.
- 46. Under all of these circumstances, plaintiff is neither representative, nor typical, of the 100,000 member class he seeks to lead.

NARROWING THE CLASS

47. The foregoing facts demonstrate that this case should not proceed as a class action under any circumstances. Clearly, the pendency and availability of foreign proceedings, the problems of res judicata, notice to foreigners, managability, the dubious applicability or American law, and complex questions of foreign law, at the minimum require the exclusion of foreigners from the purported class.

- 48. Of the 100,000 members of the purported class of IOS stock purchasers, no more than 387 were American citizens. Annexed hereto as Exhibits J and K are documents produced by Investors Overseas Bank, Ltd. which have been furnished to the Securities and Exchange Commission which list the 387 known American citizens who purchased IOS stock at the public offerings in 1969. No additional American purchasers have been identified in the extensive discovery that has taken place.
- Exhibits were either IOS employees who worked and lived in Europe when they made their purchases of IOS stock or had a close association or relationship to IOS. None of the American purchasers was a stranger to the company. Many already owned preferred stock in IOS or held options for such shares. As is reflected in the addresses of these purchasers, the overwhelming majority are residents of Switzerland or France and can easily avail themselves of the pending Swiss proceedings. I am advised by Swiss counsel that, in fact, at least 18 of the American purchasers on these exhibits have already filed claims in the Swiss proceedings against Mr. Cornfeld.
- only 37 American purchasers of IOS stock were residents of the United States when they made their purchase. This small group all purchased stock under one offering that of Investors Overseas Bank, Ltd. Plaintiff is a member of this small group. This group is obviously managable and presents no difficulties in terms of notice or language. Moreover, this group of American resident purchasers has the most contact with the United States and is best situated to invoke the arguable protections of American securities laws. Even as to them, however, for the

reasons set forth above, common questions of law and fact do not predominate, and a class action is not the best manner of adjudicating their claims.

51. It is respectfully submitted that this case should not proceed as a class action. If any such status is permitted, the class should be limited to American residents who purchased IOS stock.

Leonard M. Marks

Sworn to before me this 14th day of February, 1974.

alexe D. Brand

Natary Fundament of How York
No. 31-4503431, Qual. In N. Y. Co.
Commission Septem Mand Str. 5579

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Who Are Stockholders in I.O.S. Ltd., and Translation Thereof, Exhibit F Annexed to Cornfeld Motion

Translation

Geneva, 18 October 1971

Dear Madam, Dear Miss, Dear Sir,

We are now at last in a position to follow through on the investigations commenced last year, in the matter of the defense of the interests of the IOS Swiss employees who have purchased stock in this company.

The undersigned have formed a Committee for the Defense of the said interests.

We have submitted the case for examination by an attorney who is specialized, and advise you herewith of criminal suit which he has filed and which we feel defines perfectly the grievances which we can hold against the IOS executives.

We have now come to the stage where we can file the complaint.

If you are still minded to go ahead, we shall ask you to fill in the blanks in the herewith complaint, giving your name, first name and address, all exact (page 1), and also the number of shares purchased and the total price of your purchase (page 4), and, finally, sign the complaint on the last page, then send it direct to Mr. Antoine Hafner, Attorney, 6, rue Bellot, Geneva, who will see that all the complaints are filed together with the Procurator General.

Please be sure -- as we have arranged with Atty Antoine Hafner -- to pay to him direct your share of the amount required, namely <u>l fr.</u> per share being satisfactory to him.

On the other hand, Atty Hafner reserves the right to demand payment of supplementary additional fees from our opponents, in case the complaint proves successful.

We urge you to join us in the filing of this complaint, as we have good reasons and grounds to believe that same will not only lead to a verdict against those responsible, but also to refund of the amounts paid in purchase Translation Page 2

of the shares. Of course, we are not in a position to guarantee to you this result, but the chances of success seem to us so favorable that it would be regretable to abandon the process now and that we will succeed in seeing that justice is done.

For the Defense Committee of Swiss Employees that are Stockholders in I.O.S. Ltd.:

-illegible signature-(typed;) Francis M. Schumacher (Tel: 35 12 10)

-illegible signature-(typed:) John Morhardt (Tel: 35 48 66)

-illegible signature-(typed:) Mario Urban (Tel: 35 71 41)

Enclosures: 1 complaint to be filled out and signed, then

returned to Atty Antoine Hafner, 6, rue Bellot,

Geneva

1 payment slip

IMPORTANT: THE ADDRESSES OF THIS CIRCULAR WHO BETWEEN NOW AND OCTOBER 31 1971 SHALL NOT HAVE REPLIED WILL

BE CONSIDERED TO HAVE WAIVED ACTION .-

Genève, le 18 octobre 1971

Chère Madame, Chère Mademoiselle, Cher Monsieur,

Nous pouvons enfin donner suite aux investigations commencées l'an dernier, au sujet de la défense des intérêts des employés suisses d'IOS acheteurs d'actions de cette société.

Les soussignés se sont constitués en Comité pour la défense desdits intérêts.

Hous avons soumis le cas à l'examen d'un avocat spécialisé et vous communiquons, sous ce pli, la plainte pénale qu'il a établie, et qui nous paraît définir parfaitement les griefs que nous pouvons adresser aux responsables d'IOS.

Nous sommes arrivés maintenant au stade du dépôt de la plainte.

Si vous êtes toujours disposés à aller de l'avant, nous vous prions de compléter les blancs dans la plainte cijointe, en mentionnant votre nom, prénom et adresse exacts (page 1), ainsi que le nombre d'actions achetées et le prix total de votre achat (page 4), et, enfin, de signer la plainte en dernière page, puis l'adresser directement à Monsieur Antoine HAFNEP, Avocat, 6, rue Bellot, à Genève, lequel se chargera de les déposer toutes ensemble auprès du Procureur Général.

Vous voudrez bien - ainsi que nous en sommes convenus avec lle Antoine Hafner - lui verser directement votre part de sa provision, soit <u>fr. l.-</u> par action, au moyen du bulletin de versement ci-joint.

llous avons obtenu l'engagement de lle Hafner de ne pas demander, dans l'avenir, de nouvelles provisions et de mener l'affaire pénale jusqu'à son terme en se contentant de la provision de <u>fr. l.-</u> par action.

Par contre, Me Hafner se réserve de réclamer paiement d'honoraires complémentaires à nos adversaires, en cas de succès de la procédure.

Hous vous engageons vivement à vous joindre à nous pour le dépôt de certe plaints, car sout les res de le n es r fine de le la certe plaints, car nous per le le la certe plaints, car n'elle de la certe l'inculpation des responsables, mais aussi au remboursement des montants payés pour l'achat des actions. Sans doute mous ne commes pas en

d'obtenir que justice soit faite. Avec nos cordiales salutations.

> Pour le Comité de Défense des Employés Suisses Actionnaires d'I.O.S., Ltd. :

Francis M. SCHUMACHER

(Tél. : 35 12 10)

John MORHARDT

(Tél. : 35 48 66)

Mario URBAN

(Tél. : 35 71 41)

Annexes: 1 plainte à compléter et signer, puis retourner à Me Antoine Hafner, 6, rue Bellot, Genève 1 bulletin de versement

IMPORTANT : LES DESTINATAIRES DE CETTE CIRCULAIRE QUI N'AU-RONT PAS REPONDU D'ICI AU 31 OCTOBRE 1971 SERONT CONSIDERES COMME AYANT RENONCE A AGIR. Newspaper Article re Action Filed by Defense Committee of I.O.S. Swiss Employees Who Are Stockholders in I.O.S. Ltd., and Translation Thereof, Exhibit G Annexed to Cornfeld Motion

IN SIGHT

by Fred Bates

I.O.S.

We have been told that a Committee for the defense of the interests of the I.O.S. Swiss employees who bought shares of the Company has filed a complaint in "professional embezzlement" against the people who led the company.

The accusations are serious mand mention the names of a number of administrators such as Messrs. Cornfeld, James Roosevelt, Erich Mende, and Sir Eric Wyndham White. The aim of this complaint is to recuperate important sums which have been lost because of acts of the group.

The only thing which surprised me in this news is that it came so late. For whoever has read the book, which constitutes such a condemning accusation of the manoeuvres of Cornfeld and his associates, it seems evid nt that there would be an inquest since the book did not provoke any reaction from the people attacked.

The plaintiffs are people who worked for the company and claim to be damaged. They are undoubtedly well-placed to know what happened.

If these complaints are justified, one should hope that they will achieve their goal and that certain profits wrongly acquired by the management of this extravagant adventure, if there were such, must be reimbursed because nothing is more demoralizing, socially speaking, than the spectacle of profit-takers who live off the

fat of disputable manoeuvres after having caused heavy losses on a quantity of worthy people.

Only on inquest into justice can lead us to a definitive answer to this matter and it is exactly this inquest which the complaint will inevitable lead to. The complaint will be opposed by an imposing team of Geneva lawyers mobilized by I.O.S. Let us hope nonetheless that the matter will be vigorously prosecuted. It is a great time to establish the truth in the mysterious affair.

OPINIONS

Page 2



On nous annonce qu'un Comité de défense des intérêts des employés suisses d'I.O.S., acheteurs des actions de la Société, ont déposé une plainte en « escroquerie par métier » contre les dirigeants de cette entreprise.

Les accusations sont graves et mentionnent les noms de nombreux administrateurs tels que MM. Cornfeld, James Roosevelt, Ench Mende et Sir Eric Wyndham White. Le but de cette plainte est de récupérer des sommes importantes qui ont été perdues par suite des agissements de ce groupe.

La seule chose qui m'ait surpris dans cette nouvelle est qu'elle ait été si tardive. Pour quiconque a lu le livre, qui constitue un si accablant réquisitoire des manœuvres de M. Cornfeld et ses associés, il paraît évident qu'une enquête s'impose puisque ce livre n'a provoqué aucune réaction de la part des personnages attaqués.

Les plaignants sont des gens de la maison qui se déclarent lésés et ils sont sans doute bien placés pour savoir ce qui s'y passait.

Si ces plaintes sont justifiées, il faut espérer qu'elles aboutiront et que certains profits mal acquis par les dirigeants de cette rocambelesque aventure, s'il y en cut, devront être remboursés car rien n'est plus démoralisant, socialement parlant, que le spectacle de profiteurs qui vivent grassement du produit de manœuvres discutables après avoir causé de lourdes pertes à une quantité de braves gens.

Ce n'est qu'une enquête de la justice qui pourra nous apporter une réponse définitive à ce sujet et c'est justement cette enquête qui suivra forcément la plainte déposée. Elle se heurtera à une imposante équipe d'avocats genevois mobilisés par l'I.O.S.. Espérons tout de nième que l'action sera vigoureusement menée. Il est grand temps d'établir la vérité dans cette ténébreuse affaire.

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Complaint Filed in Swiss Proceeding, and Translation Thereof, Exhibit H Annexed to Cornfeld Motion

Geneva, October 31st, 1971

The Attorney-General (in his office) Palace of Justice Place du Bourg-de-Four 1200 Geneve

The undersigned

Family Name Christian Name Profession Exact Address

declares charges of business swindling against the persons
hereinafter mentioned, all members in September 1969 of the
Administrative Council of I.O.S. (Investors Overseas Limited)
the registered seat of which is at 800 Dorchester Boulevard West,
Montreal, Canada but whose actual board of directors is in
Geneva, 119 Rue de Lausanne, a city in which a branch office is
also inscribed (registered) with the trade register, being ...

Comte Carl Johan Bernadotte

3, Villa Emile Bergerat 92 Neuilly-sur-Seine, France

Martin Montague Brooke

Duxbury House'
Chantry View Road
Guildford
Surrey, Angleterre

Christian Henry Buhl III

Les Charmettes Gland Vaud, Suisse

Allen Richard Cantor

Port Choiseul
Pue Marchard
Versoix
Geneve, Suisse

Pasquale Chiomenti

Viale B. Buozzi 98 Rome, Italia

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Bernard	Cornfeld
	COTHITETO

Edward Joseph Coughlin, Jr.

Edward Norton Cowett

Harvey Felberbaum

Richard Gangel

Kent Gordis

Richard Hammerman

Ben Heirs

Roy Kirkdorffer

George Landau

Jay Francis Leary

Malvin Lechner

Erich Mende

George von Peterffy

218, route de Lausanne Geneve, Suisse

4, place de l'Etrier Shene-Bougeries Geneve, Suisse

Villa Belle Haven 6, rampe de Cologny Cologny Geneve, Suisse

Piazza Monte Savello 30 Rome, Italie

26 Rutland Gate Londres, S.W.7, Angleterre

Grand Coudre Celigny Geneve, Suisse

26 Kingston House South Ennismore Gardens Londres, S.W.7, Angleterre

27, chemin des Bougeries Chene-Bourg Geneve, Suisse

Ilchester House Winnington Road Londres, N.2, Angleterre

4, rue des Granges Geneve, Suisse

53, rue de Rive Nyon Vaud, Suisse

4, place de l'Etrier Chene-Bougeries Geneve, Suisse

Am Stadtwald Bad Godesberg, Allemagne

6 Coolidge Hill Road Cambridge Massachusetts, Etats-Unis

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Norman Rolnick

1249 Avully Geneve, Suisse

James Roosevelt

Route de Jussy Jussy Geneve, Suisse

Lawrence Rosen

31, chemin des Palettes Grand-Lancy Geneve, Suisse

Martin Seligson

19, chemin des Hauts-Crets Cologny Geneve, Suisse

Barry Harman Sterling

41, avenue Foch Paris, France

Robert Sutner

299 Highland Avenue Ridgewood New Jersey, Etats-Unis

George Tregea

43, quai Wilson Geneve, Suisse

Eli Wallitt

57, route de Collex Bellevue Geneve, Suisse

Ira Weinstein

12 Rosemount Westmount Quebec, Canada

Sir Eric Wyndham White K.C.M.G.

l, place de la Taconnerie Geneve, Suisse

Wilson Watkins Wyatt

1001 Alta Vista Road Louisville Kentucky, Etats-Unis

For having in Geneva in September 1969

- 1) In their capacity as Administrators of I.O.S. Ltd., put out a new issue of I.O.S. Ltd. stock.
- 2) In their double status as stockholders and administrators of I.O.S., offered on sale a block of outstanding I.O.S. stock

to an indefinite number of people.

3) In both cases, in deceiving the buyers by false assertions as to the true financial situation of I.O.S. Ltd.

In support of this suit, the undersigned exhibits the following:

1) In my capacity as a former employee of I.O.S. I bought

shares of I.O.S. Ltd. stock for the price of \$ U.S.

2) Until September 1969, I.O.S. was a privately owned limited company which was not obliged to publish its balance sheets.

- 3) In September 1969 I.O.S. became a public Canadian corporation, but its board of directors remained in Geneva.
- 4) On this occasion, the company effected for the first time a public issue of stock, quoted on the various stock markets of the world.
 - 5) Before the September 1969 issue the total capital stock of I.O.S. consisted of 43,303,360 shares of preferred stock, of a nominal value of 25¢ U.S. and of 5,392,000 shares of common stock similarly of a nominal value of 25¢ U.S. (see prospectus Para. 1, page 4).

At December 31, 1965, there existed only 1,570,515 shares of stock of \$1 U.S., paying \$5,506,000 U.S. (Para. 1, Page 50).

From 1966 to September 1969, I.O.S. Ltd. distributed under the guise of dividends, stocks of \$1 U.S. amounting to:

in 1966	1 500 515
	1,580,515
in 1967	3,060,014
in 1968	6,118,669
	10,759,198
before 1966	1,580,515
from which deduct the redeemed stock	12,339,713
	159,871
	12,173,842

(P. 1 page 50)

These 12,173,842 shares of \$1 U.S. stock split in June 1969 into 43,303,360 shares of preferred stock of 25¢ U.S. and 5,392,000 shares of common stocks of 25¢ U.S., totalling 48,695,360 shares of stock of 25¢ U.S.

It is from this total that 43,036,792 shares of stock of 25¢ U.S. represent the profits distributed by I.O.S. Ltd. in the five years between 1965 and 1967 gratuitously. That is to say, 90% of total registered capital.

6) The 29th of September 1969, I.O.S. Ltd. put into circulation its first public issue of 5,600,000 shares of new common stock of a nominal value of 25¢ U.S. thus making the total capitalization of the company 54,295,360 (48,695,360 + 600,000 = 54,295,360). These new stocks of 25¢ U.S. were offered to the public through underwriters, the list of which is published in the prospectus

P. I page 41), at a price of \$10 U.S. per share, being thus forty times the nominal value of such stock (P. I page I). The new stockholders thus brought to I.O.S. Ltd. about \$56 million U.S., of new money. At this moment, the former total capital stock represented a value of \$58,856,000 U.S. on the balance sheet (P. I page 47). Therefore, a definite rise when compared to the capital invested by the new stockholders. This issue brought the total business assets belonging to I.O.S. Ltd. to \$114,614,000 U.S. (P. 1, page 4). This sum, before being divided up among the total stock (54,295,000 shares), represents about \$2 U.S. per share.

Now, just before this issue, there were 48,695,360 shares of stock valued at \$58,856,000 U.S. on the balance sheet, being a little more than \$1 U.S. per share.

Thus, thanks to this offering of only about 10% of newly issued stock, the existing stockholders succeeded in doubling the value of the stock that they possessed. But they succeeded in a transaction much more profitable - in offering publicly, and simultaneously in the aforesaid new issue, the sale of 5,392,000 shares of common stock (of 25¢ U.S. nominal value) belonging to four hundred and ninety former stockholders (P. 1 page 3), at a price of \$10 U.S. a share, being forty times the nominal value, thus pocketing \$53,920,000 U.S. This proposal

was divided into two portions; the first of 1,450,000 shares to a Canadian group, and the second of 3,943,000 shares (rounded off to 3,950,000 in the prospectus) to the 15,000 employees of 1.0.S. of which I was a member. The directors of I.O.S. Ltd. exercised extreme pressure on its employees to buy the stock and even presented this proposal as a very great privilege granted to them (see pages 2-8).

By this proposal, the group of former stockholders, who were also the directors, multiplied by 40, the 10% profits accumulated in five years by stock dividends. They thus succeeded, in one action, to retrieve more than all the accumulated profits gained by I.O.S. Ltd. in five years. In effect, the profits were increased to:

in 1965	\$	3	,39	9,	000	U.S.
in 1966	\$	5	,13	3,	000	U.S.
in 1967	\$	7,	31	3,0	000	U.S.
in 1968	\$1	4,	36	9,0	000	U.S.
in 1969 (first six months)	\$	9,	52	1,0	000	U.S.

total

Thus, the stockholders were reimbursed through one action for the total stock subscribed to since the founding of I.O.S. Ltd., as well as for the total of the accumulated profits since the founding of the company, seeing that the said subscriptions and

\$39,835,000 U.S.

profits were increased on June 30, 1969 to \$58,856,000 U.S. (P. I, page 47).

Even though, 90% of the stocks which they retained (and which had doubled in value) could well be worth nothing in the future, the stockholders could not lose a cent!

The end of September 1969 was the last opportunity to achieve such a transaction because six months later, it would have been impossible, as one shall soon see.

8) To offer stock publicly at 40 times the nominal value is only possible for a company whose financial situation is not only healthy but also in full expansion and whose future profits are assured. Was I.O.S. Ltd. in September 1969 in such a situation? The balance sheets and the accounts of losses and gains at December 31, 1968 and at June 30, 1969, published in the prospectus (see P.1 pages 46, 47 for the balance sheet, and 6 and 7 for the account of losses and gains) - did they reflect the true situation of the company?

The simple comparison between the published accounts in the prospectus and the report of the auditors (3rd part) for the 1969 fiscal year, with the balance sheet and the profit and loss account of June 30, 1970, published by the company, answers this question in the negative.

9) In the prospectus, the balance sheet of December 30, 1968, it shows a net profit of \$14,369,000 U.S. and that of June 30, 1969 of \$9,521,000 U.S.

The comparison between the accounts of the first six months of 1968 and 1969, also published in the prospectus, showed that the annual profits were triple the profit of the first six months thus leading one to believe that the profit of 1969 would be about \$30,000,000 U.S. These figures, moreover, were confirmed by diverse publications of I.O.S.

(P. 5, 6, 7, 8). The price of \$10 U.S. for a 25¢ U.S. stock could therefore apparently be justified, since a speculator could estimate the market value at twenty-five times its earnings.

In only counting that for 1969 the net profit was \$20,000,000 U.S., being the double of profits of the first six months, this represents: 25 x 20,000,000 = \$500,000,000 U.S. The capital was increased to a total of more than 50,000,000 shares, the market value of which could be estimated at \$10 U.S. a share, provided that the minimum annual earnings of \$20,000,000 U.S., promised for 1969 were assured, and the company's expansion was similarly assured. But, a serious analysis, that one had the right to expect from the directors who were so well paid (P. 1 page 37 more than the \$1,000,000 U.S. for the Administrative Council) showed that this company was in reality destined for immediate insolvency.

10) Insolvency is, moreover, exactly what happened six months later, in April 1970. In effect, the balance sheet published on December 30, 1969 already showed a reduced profit of \$10,282,000 U.S. (the auditor's return of accounts, P. 3 page 3), instead of a minimum profit of \$20,000,000 U.S. or \$30,000,000 U.S. as one was led to believe.

But the comptroller's report (Note 6) shows that even to obtain this reduced result, the company had been obliged to enter on its books a fictitious commission of \$9,830,000 U.S. and except for this, the fiscal year of 1969 would have shown no profit.

The publication of this report caused great consternation among the financial milieu and opened the eyes of the businessmen, who had let themselves be fooled up until then.

The balance sheet published for the first half of 1970 (until June 30th) only aggravated the situation and ultimately destroyed any confidence in the company. In effect, at this date I.O.S. had to announce a loss of \$25,861,000 for the first six months.

Couldn't the company have foreseen such a rapid disaster? For the proof of this, it suffices to analyze with only a minimum of care, the profit and loss accounts of I.O.S. Ltd. for the last five years. 11) The commissions gained on new business compared to the working profits give us the following table:

Year .	Commissions on New Business	Earned	-
1964	11,090,000	1,700,000	16
1965	21,000,000	3,700,000	18
1966	33,000,000	4,200,000	11
1967	37,000,000	600,000	. 0
1968	61,000,000	2,300,000	4
1969	113,000,000	4,300,000	0

The final world net profit increased on a year-to-year basis thanks only to the revenues of other affiliated companies, whose operations should have been verified again, in order to know if certain profits were not purely fictitious: like those of the supposed commission of \$10,000,000 U.S. computed in 1969.

However, this examination appears superfluous in this particular case, because these revenues could play only a subordinate role in the financial development of T.O.S., the financial structure of which rested only on one support: the commissions on new business.

The examination of the above table is very enlightening and proves that in 1967, in spite of the \$37,000,000 U.S. commission on new business, there was a working deficit of \$600,000 U.S., that in 1968 while the commissions were increasing to \$61,000,000 U.S.,

this profit was only 4%, being \$2,300,000 U.S., and that in 1969 in spite of \$113,000,000 U.S. of commissions on new business, there was a new working deficit of \$43,300,000 U.S.

These figures prove that even the I.O.S. system was corrupt at its base and it was not likely to survive. Why?

Simply because the general expenses linked to this kind of operation were much too costly. 70% were given out to agents (and what is more in 1969 they came up to nearly 90% in reality!). Only 30% was left to I.O.S. to cover the general expenses brought on by new contracts signed during the year, as well as those of old contracts.

But in addition, I.O.S. essentially procured savings contracts consisting of monthly deposits in small sums, the majority from \$50 U.S. to \$500 U.S. spread out from ten to fifteen years.

Now, I.O.S. received only one commission in the course of the first year (about 8%). This commission was thus to assure the payment of general expenses bought on by each contract during its ten to fifteen year period. The I.O.S. had already absorbed all of the commission in the course of the first year; instead of spreading it out over the rest of the life of the contracts. Thus, I.O.S. had no more income to cover the remaining 9 to 14 years. If I.O.S. had used only 10% of the 30% that remained on the commissions each year, every one would have realized that

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the business was not feasible. In effect, the annual working accounts would have been deficient, and I.O.S. would have had to close shop long before.

Little by little as the years passed, the expenses burdening the administration of the savings contracts concluded firing the preceding years built up and increased annually. It was enough that in 1967, the commissions increased only slightly (from \$33,000,000 U.S. to \$37,000,000 U.S.) so that the accumulated expenses from the preceding years and of the year in progress were no longer covered by the commissions and let a \$600,000 deficit appear.

We also see that the enormous commissions gained in 1969 (\$113,000,000 U.S.) were not enough to cover the expenses of the year and those accumulated from the 9 to 14 preceding years from which came a working deficit of \$4,334,000 U.S.

As for the first half of 1970, the commissions on new business having fallen off to \$37,000,000 U.S., in view of the crisis which started in April 1970 - the deficit rose to \$25,000,000 U.S. The figures are obvious and could not have escaped the attention of the directors.

12) Did they know already in September 1969 that the company was rapidly moving towards the inevitable insolvency of 1970?

The following is the result of the above study: The system created by I.O.S. was onerous to excess. The costs of obtaining the new savings contracts were too high.

The I.O.S. survived until 1970 only because the expansion of the years 1968 and 1969 had permitted the doubling of commission returns (receipts) on new business each year, and because the company just barely succeeded in covering the expenses (new and old), accumulated over a period of more than ten years (the old expenses not being covered by any new receipts).

The directors thus knew that the slightest falling off in expansion would lead them straight to catastrophe.

costs to double the business figures in 1969, they increased the commissions owed to their salesman almost up to 90%, instead of 70%, in order to force the acquisition of new savings contracts, thus giving the appearance of continued expansion.

For I.O.S. to survive until 1972, it would have been necessary for the commissions on new business to reach \$260,000,000 U.S. in 1970 and \$500,000,000 U.S. in 1971 and so on. These figures were out of proportion with its market potential. From the year that the commissions didn't double, it was a disaster. The expenses of the solicitors in 1969 (\$78,400,000 U.S.) and the general expenses (\$54,000,000 U.S.) making the total of \$134,000,000 U.S. already exceeded by \$21,000,000 U.S. the commissions on new business. This working deficit could not be completely covered by the administration fees accruing on the investment trusts.

Because they were aware of the danger than menaced the company the directors made up a group of 490 stockholders (themselves included) in September 1969 to sell 10% of their stock thus pocketing more than fifty million dollars before the catastrophe became public. It was the last moment to save an important part of their holdings before the inevitable collapse. Could the directors have ignored such an obvious situation? Of course not. For those who made the decision to go ahead with the two stock issues of September 1969 without following it up by the least critical analysis of the financial status of the company, one would have to conclude that in default of malicious intention pure and simple, there would be eventual fraud, which comes to the same thing. In effect, a highly paid director's disinterest as to the financial situation of his company on the eve of two stock issues (which were to take from the public close to 500,000,000 Swiss francs) would evince such unconcern that one has the right to consider that in order to insure his own interests he voluntarily closed his eyes and laughed at the injurious consequences to the buyers, having decided to ignore whether the published balance sheets reflected the real financial situation of the company and that this situation must be a short term compromise.

Onc can not forget that in stock matters, the estimation of the value of a security is essentially its future potential, and that the directors could assess the value of stock of I.O.S. Ltd. at forty times its nominal worth only on the condition that its future rested on a solid base, not on doubts or compromises.

Instead the affirmations resulting from the published balance sheets

are fallacious.

I conclude that the directors are guilty of business swindling (fraud), accompanied by aggravated circumstances, because it was directed to an indeterminate number of purchasers of unregistered stocks. Consequently, I ask you to give this charge the attention due to it.

I declare myself the plaintiff, with M. Antoine Hafner as my counsel, and I solicit from now on the privilege of obtaining contradictory information.

May I extend to you the expression of my high esteem.

				-
(Si	gnat	ure)

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Exhibits

- 1. Prospectus for the issuance of 5,600,000 shares of common stock.
- 2. Prospectus for the sale of 3,950,000 shares of issued common stock.
 - 3. Controller's report for fiscal year 1969.
- 4. 1969 balance sheet and profit and loss statement for the first half of 1970.
 - 5. Circular of Bernard Cornfeld, May 27, 1969.
 - 6. I.O.S. Bulletin, March 1969.
 - 7. Circular of Mr. Cowett, December 1969.
 - 8. Circular of Mr. Cornfeld, April 10, 1970.

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Achāve, le 31 octobre 1971

Monsieur le Procureur Général En Son Parquet Padais de Justica Place du Écurg-de-Four

1200 RENEVE

Le soussigné

Nom																		
Prénom(s)																	
Profess	ion	•	 															
Adrosse																		
														•				

déclare, par la présente, porter plainte en escroquerie au l'élem (article 148 CPS) contre les personnes ti-après de-cipues, toutes membres en septembre 1969 du Conseil d'Administration d'I.O.S. (Investors Gyerseas Services), Ltd., dont le sièce confel est à Montréal, Canada, 800 norchester soulevard Mest, mais dont la Direction effective est à Genève, 119, rue de Lausanne, ville dans laquelle une succursale est échlement inscrite au legistre du Commerce, soit

Comte Carl Johan Bernadotte

3, Villa Emile Borgerat 92 Heuilly-sur-Scine, France

Martin Montague Brooke

Duxbury House Chastry View Road Guilaford Surrey, Angletorre

Christian Henry Buhi III

Les Charmattes Gland Vaud, Suisse Allen Richard Cantor

Port Choiscul Pud Tarchard Versely Genève, Suisse

Pasquale Chiomenti

Viele 8. Suozzi on Pone, Italia

Bernard Cornfold

210, routo de Lausanna Genàva, Suisse

Edward Joseph Coughlin, Jr.

6, place do l'Esrier Chéco-Pougories Gonàva, Suissa

Edward Morton Cowett

Yilla Pello Havon G. rampa da Cologny Cologny Ranàva, Suisse

Harvey Felberbaum

Pinzza Conte Savello 30 Pomo, Italia

Richard Gangel

Londons, S.M.7, printing

Kent Cordis

Aut .

Granda Coddre Caliday Soneva, Suissa

Richard Hammerman

26 Kineston House South Engismore Gardens Londres, S.M.7, meleterre

Ben Heirs

?7, chamin des Pougaries Châne-Soura Genève, Suissa

Roy Kirkdorffer

Tichester House Pinnington Pond Londres, 2.2, Ingleterra

George Landau

.A, ruo des Arangos Acaêvo, Suisso

Jay Francis Leary

53, rus de live duca Vaud, Suissa

Malvin Lechner

A, blace do l'Eurier Châne-Rougaries Ganève, Suisse Erich Hende

Am Stadewald Rad Godesharg, Allemagna

George von Petarffy

6 Coolidge Hill Road Cambridge Massachusetts, Etats-Unis

Norman Polnick

1249 Avully' Genave, Suisse

James Poosevelt

foute de Jussy Jussy Senêve, Suisse

Lawrence Rosen

31, chemin des Palettes Grand-Lancy Genève, Suisse

Martin Seligson

10, chemia des Hauts-Créts . Cologny Genève, Suisse

Barry Harman Sterling

41, avenue Foch Paris, France

Robert Sutner

200 Highland Avenue Ridgewood New Jarsey, Etats-Unis

George Tregea

43, quai Hilson Ganève, Suisso

Eli Wallitt

57, route de Collex Bellevue de Suisse

Ira Weinstein

12 hosemount Mestmount Puébec, Canada

Sir Eric Wyndham White K.C.N.A.

1, place de la Taconnerie Conèvo, Suisse

Wilson Watkins Wyatt

1001 Alta Vista Road . Louisville Kentucky, Ftats-Unis

pour avoir, à Genève, en septembre 1969 :

 En leur qualité d'Administrateurs d'I.O.S., Ltd. procédé à une émission d'regions neuvelles d'I.O.S., Ltd.

- 2. En leur double qualité d'actionnaires et d'actions teurs d'I.O.S., Ltd. offert en vente un paquet d'ec-tions anciennes à un nombre indéterminé de personnes.
- 3. Dans les deux cas, en tremeant les achateurs ner des affirmations fallacieuses sur la véritable situation financière d'I.C.S., Ltd.

A l'apput da cette piainte, la soussione exposa co qui suit :

- 1. En ma qualité d'ancien employé d'IOS, j'ai acheté actions anciennes d'I.O.S., Ltd., pour la prix de USS
- 2. Jusqu'en septembre 1969, E.C.S., Ltd. était une socisat chorves privée, qui alétait mès obligée de par filer son orien.
- 3. En sentembre 1969, I.O.S., Ltd. stast transformão en société publique canadianne, mais se direction affective était à feneve.
- 4. A cette occasion, elle officetua neur la première fois une émission publique d'actions, tout en faisant ed-c noter ces titres dans diverses bourses dans le monde.
- 5. Evant l'émission de sentembre 1969, le conital-actions d'I.O.S., Ltd. se composait de 43'393'360 actions privilégiées, d'une valeur nominale de 26 cents US, et da 5'392'909 actions ordinaires, d'une valeur nominale de 25 cents US également (voir prosocetus d'émission P.1 page 4).

Il n'existait, au 31.12.1065, que l'580'515 actions da USS 1, mayors USS 5,506,000 (r.1 page 50).

To 1965 à sentembre 1990, I.M.S., Ltd. a distribué, autitre de dividendes, des actions gratuites de USA 1, à concurrence de :

en 1966 1'580'515
en 1968 6'118'669

avant 1966 1'580'515

dont à déduire 159'871
actions rachetées 159'871

(P.1 page 50)

Ces 12'173'842 actions de USS 1 furent divisões, en juin 1969,

en 43'303'360 actions privilégiées de 25 cents US
et 5'392'000 actions préincires de 25 cents US

total 48'695'360 de 25 cents US.

C'est sur ce total que 43'036'792 actions de 25 cents US représentent les bénéfices distribués par I.O.S., Ltd. en 5 ans entre 1965 et 1967 à titre gratuit, c'est-à-dire le 90% du capital social total.

6. Le 29 septembre 1969, I.O.S., Ltd. décida d'émattre sa première émission publique de 5'600'000 actions ordinaires nouvelles, d'une valeur cominale de *25 cents US, portant ainsi le total des actions de la société à 54'295'360 (48'895'360 + 5'800'000 = 54'295'360).

Cos nouvelles actions de 25 cents US furent affartes au public par l'intermédiaire d'un syndicat souscrieteur, dont la liste est publiée dans le prespectus d'émission (P.1 page 41), au orix de USS 10 l'action, soit 40 fois la valeur nominale (P.1 page 1).

Les nouveaux actionnaires apportaient aiesi à I.G.S., Ltd., environ US\$ 56,000,000 d'argeau frais.

A. ce moment, l'ancien capital-actions représentait une valeur de US\$ 58,856,000 au rilan (P.1 page 47 in

- 5 ..

fine), denc un montant sensiblement égal à calui apoerca cor les nouveaux actionnaires.

Catte Omission portait le total des fonds propres

Cette somme devant so reportir untra la total dos actions; soit 50'205'000, cela représente environ USS ?

Or, justo avent cette émission, il y avait 09'650'360 actions valant au bilan USS 58,855,000, soit un peu plus de USS 1 par action.

Vinst, orace à cette émission d'environ 10% d'actions nouvelles soulement, les anciens actionnaires ent reussi à doubler la valeur des actions ou'ils détenaient.

7. Tais ils ont réussi une opération beaucrup plus profitable en offrant publiquement, et simultanément à la susdité émission, la vente de 5'392'000 actions ordinaires anciennes de 25 cents US, appartenant à 490 anciens actionnaires (P.1 page 3), écalement à USC 10 l'action, soit 40 fois la valeur nominale, ampechant ainsi USS 53,720,000. Cette offre a été divisée es 2 lots, le ler de 1'650'000 actions à un groups canadien, et le 2ème de 3'942'000 actions (arrondi à 3'950'000 dan le prospectus) aux 15'000 employés d'105, dont j'étais (P.2).

Le Consoil d'idministration d'I.P.S., Ltd. a exercé une très forte pression sur ses employés, afin il les inciter à acheter des actions, et présente nême l'opération comme un très grand privilège qui leur était concédé (voir P.S & 8).

Par catte opération, le groupe élénciens actionnaires, dont tous les idministrateurs, multipliaient par 10 la 10% seulement de leurs bénéfices accumulés en 5 ans in lactions gratuites, réussissant ainsi, en une seule fois, a récupérar plus que les bénéfices totaux accumulés par 1.0.5., Ltd. en 5 ans.

En offet, cos bénéficos se sont élavés à :

.).7	
on 1955	USS 3,300,000
on 1966	USC 6,133,000
en 1967	- USC 7,313,000
en 1968	US\$14,069,000
en 1969 (ler semestre)	use e,s21,000
total	USS39,835,000
	4005036550055

Ainsi, ces actionnaires s'étaient remboursés en une fois la totalité des actions souscrites des l'origine d'I.O.S., Ltd., ainsi que la totalité des bénéfices accumulés des l'origine de la société, aussque les-dits souscriptions et bénéfices accumulés s'élevaient, au 30 juin 1969, à USS 58,856,900 (P.1 page 17).

Dès lors, le 90% des actions qui leur restait (et qui avait doublé de valeur) pouvait bien se plus rien valoir à l'avenir, sans que, pour autant, lesdits actionnaires perdent l'entime!

A fin septembre 1969, c'était le tout dernier moment pour réaliser une telle opération, car, & mois plus tard, elle aurait été impossible, ainsi qu'on va le voir ci-après.

8. Offrir publiquement des actions à 40 fois la valeur nominale n'est possible que pour une société dont la situation financière est non soulement saine, mais encorc en pleine expansion, et dont les bénavices futurs sont assurés.

I.O.S., Ltd. Stait-elle, on septembre 1989, dans une telle situation ?

Les bilans et comptes de partes et profits au 31.12.1968 et au 30.6.1969, publiés dans le prospectus d'émission (P.1 pages 45 et 47 pour le bilan, et 6 et 7 pour le compte de pertes et profits) reflétaient-ils la vraie situation de la société ?

La simple comparaison entre les comptes publiés dans le prospectus d'émission et le rapport des vérificateurs des comptes (pièce 3) pour l'exercice 1969, puis le billan et compte de pertes et profits au 30.6.1970 publié par la société, répond à cette question sur la médative.

9. Dans le prospectus d'émission, le bilun au 30.12.1068 laissait apparaître un bénévice not de USS 11,369,000 et colui au 30.5.1969 (lar semestre) de USS 9,521,001.

La comparaison entre les constas du ler semestre 1968 et 1969, également publiés dans le prospectus, montrait que le bénéfice annuel était le triple du bénéfice du ler semestre, laissant ainsi croire que la bénéfice de 1969 serait d'environ USE 30,000,000.

Ces chiffres ont, d'ailleurs, att confirmés par diverses publications d'IOS (P. 5, 6, 7 et 8).

Le prix de USC 10 par action de 25 dents US pouvait done apparemment se justifier, puiseu'il est courant, dans le domaine boursier, d'estimer la valour d'une action à, par exemple, 25 fois son bénéfice annuel. En ne comptant, pour 1969, que USE 20,000,000 de bénéfice net, soit le double du bénéfice du ler samestre, cela représente : 25 x 20'000'000 = 600'000'000. Le capital social s'élevant, au total, à plus de 50'000'000 d'actions, la valeur boursière pouvait être estimée à USS 10 l'action, à condition, trutofois, que le bénéfice annuel de USY 20,000,000 minimum, promis pour l'exercice 1969, soit assuré et que l'avenir de la se-ciété soit en expansion et également assuré.

Or, une analyse sérieuse, que l'on était en droit d'attendre d'Administrateurs grassement rétribués (P.T page 37 - plus de US\$ 1,000,000 pour le Conseil d'Administration), démontrait que cette société était en réalité assurée à brève échéance de la déconfiture.

10. C'est, d'ailleurs, ce qui se produisit 6 mois plus tard, des avril 1970.

En effet, le bilan publié au 30.12.1960 laissait déjà apparaître un bénéfice réduit à US2 10,282,000 (rapport des contrôleurs aux comptes, P.3 page 3), au lieu des US\$ 20,000,000 minimum, ou US\$ 30,000,000 laissés entrevoir.

Mais le rapport des contrôleurs (note 6) montre que même pour obtenir ce résultat réduit, la société avait été obligée de comptabiliser une commission fictive de USS 9,830,000, et qu'à défaut, l'exercice 1969 n'au-rait laissé apparaître aucun bénéfice.

La publication de ce rapport jota la consternation dans les milieux financiers et duvrit les youx des hommes d'affaires qui s'étaient jusque la laissé berner.

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Le bilan publié pour le ler semestre 1970 au 30.6.1970 aggrava la situation et ruina définitivement la confignce. En effet, à cette date, I.G.S., Ltd. devait annoncer pour les 6 premiers mois une perte de US\$ 25,861,000 !!! (2.4).

Les Administrateurs pouvaient-ils prévoir un désastre aussi rapide ?

Pour s'en convaincre, il suffit d'analysen, avec un minimum d'attention, les comptes de portes et profits d'I.O.S., Ltd. des 5 dernières années.

11. Les commissions réalisées sur les affaires nouvelles comparées au bénéfice d'exploitation donnent le tableau ci-après :

Année	Commissions sur affaires nouvelles	Bénéfice d'exploitation	%
1964	11,000,000	1,700,000	15
1955	21,000,000	3,700,000	18
1956	33,000,000	4,200,000	11
1967	37,000,000	- 600,000	0
1968	61,000,000	2,300,000	Δ
1969	113,000,000	- A,300,000	0

Le bénéfice net global final n'est allé en augmentant d'année en année que grâce aux revenus des sociétés à activités annexes, dont les opérations devraient être encore vérifiées, afin de savoir si certains bénéfices ne sont pas purement fictifs et du genre de ceux de la commission fictive de USS 10,000,000 comptabilisée en 1969.

Toutefois, cet examen paraît superflu en l'esnèce, car ces revenus ne pouvaient jouer qu'un rôle acces-soire sur la marche financière d'IOS, dont l'édifice financier ne reposait que sur un soul pilier : les commissions sur affaires nouvelles.

Or, l'examen du tableau ci-dessus est éloquent et démontre qu'en 1967, malore USS 37,000,000 de commissions sur affaires nouvelles, il y avait un déficit d'exploitation de USS 600,000, qu'en 1966, pour des commissions s'élevant à USS 61,000,000, ce bénéfice n'était que de 4%, soit USS 2, 300,000, et qu'en 1969, malgré USS 113,000,000 de commissions sur affaires nouvelles, c'est un nouveau déficit d'exploitation de USS 4,300,000 :::

Ces chiffres démontrent que le système même d'IOS était vicié à la base et n'était pas viable. Pourquoi ?

Simplement parce que les frais généraux liés à ce genre d'opérations étaient beaucoun trop onéreux. 70% des commissions étaient versés aux démarcheurs (et encore, en 1969, elles ont atteint en réalité près de 90%!). Il ne restait que 30% à IOS pour assurer les frais généraux provoqués par les nouveaux contrats souscrits au cours de l'année, ainsi que par la gestion des anciens contrats.

Mais il y a plus. IOS obtenait essentiellement des contrats d'énargne comportant des versements mensuels de petits montants, en majorité de USS 50 à 500, échelonnés sur 10 à 15 ans.

Gr, IOS no recevait qu'une commission unique au cours de la première année (de l'ordre de 8%). Cette commission devait donc assurer le paiement des frais généraux provoqués par chaque contrat pendant 10 à 15 ans. Or, IOS absorbait la totalité de la commission déjà au cours de la première année, au lieu de la répartir sur la durée des contrats. IOS n'avait, ainsi, plus de revenu pour couvrir les 9 à 14 années restantes. Si IOS n'avait, chaque année, utilisé que 10% du 30% lui restant sur les commissions, chacun se serait immédiatement rendu compte que l'affaire n'était pas viable. En effet, les comptes d'exploitation de chaque année auraient été déficitaires, et IOS aurait du fermer boutique depuis longtemps.

Au fur et à mesure que passaient les années, les frais grevant l'administration des contrats d'énargne conclus au cours des années précédentes s'accumulaient et allaient en grossissant d'année en année. Il a suffi ou'en 1967, les commissions n'augmentent que légèrement (de USS 33 à 37,000,000) neur que les frais accumulés des années précédentes et de l'année en cours ne soient plus couverts par les commissions et laissent apparaître un déficit de USS 600,000.

On voit également que les épormes commissions gagnées en 1960 (USS 113,000,000) n'ont nas suffi pour couvrir les frais de cette année et ceux accumulés des 9 à 14 années précédentes, d'où un déficit d'exploitation de USS 4,334,000 !!!

Quant au ler semestre 1970. les commissions cur -=

faires nouvelles étant - vu la crise déclenchée en avril 1970 - retombées à US\$ 37,000,000, le déficit s'est élevé à US\$ 25,000,000 !!!

Ces chiffres sont éloquents et n'ont pas pu échapper à l'attention des Administrateurs.

12. Savaient-ils déjà, en septembre 1969, que la société marchait, à pas de géant, vers la déconfiture inévitable des 1970 ?

C'est ce qui résulte à l'évidence de l'étude ci-ressus.

Le système inventé par 105 était onéreux à l'excès. L'obtention de nouveaux contrats d'épargne soûtait trop cher.

IOS n'a pu survivre jusqu'en 1970 que parce que l'expansion des années 1968 et 1969 avait permis de doubler chaque année les recettes en commissions sur affaires nouvelles, et que la société arrivait ainsi
teut juste à couvrir les vrais nouveaux et anciens,
qui s'accumulaient depuis plus de 10 ans, les anciens
n'étant couverts par aucune recette nouvelle.

Les Administrateurs savaient donc que le moindre fléchissement dans l'expansion conduisait droit à la catastrophe.

Ils en étaient si conscients que, voulant doubler le chiffre d'affaires à teut prix en 1969, ils ont augmenté les commissions dues aux démarcheurs jusqu'à nrès de 90%, au lieu de 70%, afin de forcer l'acquisition de nouveaux contrats d'épargne et laisser croire à une expansion continue.

Pour qu'IOS ait du survivre jusqu'en 1972, il aurait fallu que les commissions sur affaires nouvelles passent à US\$ 250,000,000 en 1970 et à US\$ 500,000,000 en 1971, et ainsi de suite. Ces chiffres étaient hors de pronortion avec les nossibilités du marché. Des l'année où les commissions n'étaient pas doublées, c'était le désastre.

Les frais des démarcheurs en 1069 (USF 78,400,000) et les frais généraux (USF 54,600,000), soit, au total. USF 134,000,000, dépassaient déjà de USF 21,000,000 les commissions sur affaires couvelles.

Ce déficit d'exploitation ne pouvait pas être entièrement couvert par les honoraires de gestion accrus des fonds de placement.

Co ne peut être que parce qu'ils out été conscients

du danger qui menaçait la société que les Administrateurs ent engagé 490 actionnaires anciens, dont euxmêmes, en septembre 1969, à vendre 10% de leurs actions anciennes, empochant ainsi plus de US\$ 50,000,000, avant que la catastronhe n'apparaisse au grand jour. C'était même le dernier moment pour sauver une part importante de leurs avoirs avant la détâcle inévitable.

Les Administrateurs pouvaient-ils ignorer une telle situation ?

Cala anparaît exclu.

Pour ceux d'entre eux qui auraient accenté de décider des deux émissions de septembre 1969 sans procéder à la moindre analyse critique de la marche financière de la société, il faudrait admettre qu'à défaut d'intention délictuelle pure et simple, il y aurait dol éventuel, ce qui revient au même.

En effet, un Administrateur largement rétribué, qui se désintéresserait à ce point de la situation financière de sa société à la veille de deux émissions devant soutirer au public près de fr.s. 500'000'000.-, ferait preuve d'une telle insoucienace qu'on est en droit de considérer que pour sauvegarder ses prepres intérêts, il a volontairement fermé les yeux et s'est m'quî des conséquences dommageables pour les acheteurs. Mécidé ou'il était à passer outre que les bilans publiés reflètent ou non la véritable situation financière de la société, que cette situation doive être ou non compromise à brève échéance.

On me peut oublier qu'en matière boursière; l'estimation de la valeur d'un titre tient essentiellement compte de l'avenir, et que les Administrateurs ne nouvaient estimer l'action I.O.S., Ltd. à 40 fois sa valeur nominale qu'à la condition que cet avenir soit assuré sur des bases solides, et non douteux ou compromis. A défaut, les affirmations résultant des bilans publiés sont fallacieuses.

d'en conclus que tous les Administrateurs se sont rendus coupables d'escroquerie, accompagnée de la circonstance aggravante du métier, car il se sont adressés à un nombre indéterminé d'acquéreurs d'actions en les faisant coter en bourse.

Je vous prie, en conséquence, de bien vouloir denner à la présente plainte la suite qu'elle comporte.

Je me constitue partie civile, avec <u>election de domi-</u> cile en l'Etude de mon Conseil, de Anteine Mafner,

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avocat, et sollicite d'ores et déjà le bénéfice de l'information contradictoire.

Veuillez agréer, Monsieur le Procureur Général, l'expression de ma très haute considération.

(Signature)

Annexes :

- Prospectus d'émission pour 5'600'000 actions ordinaires
 Prospectus d'émission pour 3'950'000 actions ordinaires anciennes
- Rapport des contrôleurs aux comptes pour l'exercice 1969
- Bilan et compte de pertes et profits nour le ler semes-
- 5. Circulaire de Bernard Cornfeld du 27.6.1959
- 6. Bulletin d'IOS de mars 1969
- 7. Circulaire de M. Cowett de décembre 1969 (
- 8. Circulaire de M. Cornfold du 10.4.1970

Notice of Motion of I.O.S., Ltd. to Dismiss Complaint

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

HOWARD BERSCH,

Plaintiff, : 71 Civ. 5373 (R.L.C.)

-against-

NOTICE OF MOTION BY

DREXEL FIRESTONE, INC., et al., : DEFENDANT I.O.S., LTD.

TO DISMISS COMPAINT

Defendants. :

PLEASE TAKE NOTICE that upon the affidavit of Herbert M. Wachtell, sworn to the 16th day of April, 1974, the affidavit of Edward A. Stoltenberg, sworn to the 3rd day of December, 1973, and all prior papers and proceedings herein, the undersigned will move this Court before the Honorable Robert L. Carter, at a date, time and place to be fixed by the Court, in May, 1974, in the United States Courthouse, Foley Square, New York, for an order dismissing the complaint herein as to defendant I.O.S., Ltd. on the following grounds:

- (a) pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure, for insufficiency of plaintiff's alleged service of the summons and complaint on IOS;
- (b) pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, for plaintiff's failure to diligently prosecute this action as against IOS;

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- (c) pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, for lack of personal jurisdiction over IOS;
- (d) pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, for lack of jurisdiction of the subject matter; and
- (e) alternatively to (d) above, pursuant to Rule 12(b)(1) for lack of jurisdiction of the subject matter of all claims by members of plaintiff's purported class who were not American citizens resident in the United States;

and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York April 16, 1974

WACHTELL, LIPTON, ROSEN & KATZ

A Member of the Firm

Attorneys for Defendant I.O.S., Ltd.

Office and P. O. Address 299 Park Avenue New York, New York 10017 Tel. No. (212) 371-9200

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Affidavit of Herbert M. Wachtell in Support of
Motion to Dismiss Complaint

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

HOWARD BERSCH,

Plaintiff, : 71 Civ. 5373 (R.L.C.)

-against-

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DREXEL FIRESTONE, INC., et al., :

AFFIDAVIT

Defendants.

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

HERBERT M. WACHTELL, being duly sworn, deposes and says that he is a member of the firm of Wachtell, Lipton, Rosen & Katz, counsel for I.O.S., Ltd. ("IOS"), now in liquidation. IOS is named as a defendant in this action.

ceeding by the Co-Liquidators of IOS, recently appointed by the Supreme Court of New Brunswick, Canada, pursuant to the Winding-up Act of Canada, Revised Statutes of Canada, 1970, Chapter W-10. Said Co-Liquidators were appointed on November 5, 1973 after petitions were filed in August, 1973 and thereafter by two creditors and a shareholder of IOS. Both Liquidators are Canadian chartered accountants and Licensed Trustees in Bankruptcy; one is an employee and designee of the Department of Consumer and Corporate Affairs of the Government of Canada. The foregoing is pointed out at the outset so that it is made clear that IOS as presently constituted is subject to independent, responsible and court-approved control.

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- 2. It is respectfully noted at the outset that the appearance of IOS herein is a limited and special appearance made solely for the purposes of the instant motion and the alternative motion for a stay of prosecution filed simultaneously herewith. As is apparent from the nature of the instant motion, IOS does not hereby consent to this Court's jurisdiction in any respect.
- 3. The instant affidavit is submitted in support of the motion made herein on behalf of IOS seeking to dismiss the action as against IOS on any one or more of the following grounds:
 - (A) pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure, for insufficiency of plaintiff's alleged service of the summons and complaint;
 - (B) pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, for plaintiff's failure to diligently prosecute this action as against IOS;
 - C) pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, for lack of personal jurisdiction over IOS;
 - (D) pursuant to Rule 12(b)(1) of the Federal
 Rules of Civil Procedure, for lack of jurisdiction of the subject matter, and
 - (E) alternatively to (D), pursuant to Rule 12(b)(1) for lack of jurisdiction of the subject matter of all claims by members

of plaintiff's purported class who were not American citizens resident in the United States.

- A. This action must be dismissed as to IOS for lack of personal jurisdiction in that plaintiff failed to, and cannot, effect proper service of process on IOS.
- 4. This action was filed by plaintiff in December, 1971, seeking damages against the defendants for alleged violaions of the United States securities laws arising from three public offerings of IOS common stock in 1969 ("the 1969 Offerings"). The defendants include a group of foreign and domestic underwriters, several foreign banks, an accounting firm, Bernard Cornfeld and IOS. Within two months of filing the complaint herein plaintiff completed service on all defendants except Mr. Cornfeld and IOS. As to IOS, plaintiff chose to wait a full year -- until December 1972 or January 1973 -- before he even attempted to make service. When such service was finally attempted, it was done purportedly pursuant to the United States securities laws and Rule 4(i) of the Federal Rules of Civil Procedure, by registered mail addressed to IOS at "99 Aldwych, London W.C.2, England" (the "London Address") -- which, however, was in fact not an IOS address. The envelope was accordingly returned marked with the word "Refused" totally unidentified as to source. It was based on this alleged "service" that -- nine months later, without any interim attempt on the part of plaintiff to provide IOS or anyone conceivably connected with IOS with actual notice -- plaintiff sought (and obtained) a default judgment against IOS. Simultaneously plaintiff also obtained a default judgment against defendant Bernard Cornfeld. Of course, as the Court is aware, those

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default judgments were vacated upon consent of the plaintiff on December 5, 12'3, at a special conference before Judge Ryan of this Court after defendants generally outlined to the Judge the manifest deficiencies in plaintiff's original service attempts upon both IOS and Mr. Cornfeld. Although reluctantly acceding to the vacating of default, plaintiff nevertheless refused to concede the inadequacy of his original service. As a consequence thereof, IOS and Mr. Cornfeld were granted leave to file their separate motions herein seeking a dismissal of the action in its entirety on jurisdictional grounds.

Thereafter, while your deponent's firm was engaged in completing the instant motion papers, plaintiff -- apparently in tacit recognition of the invalidity of the initial service at the London Address -- was attempting to effect new service upon IOS. Thus, it now appears that on approximately February 1, 1974 -- more than two years after plaintiff had commenced this action, more than a year after plaintiff's first deficient attempt at service, and almost two months after Judge Ryan had induced plaintiff to consent to the vacating of the default judgments against IOS and Mr. Cornfeld -- plaintiff again attempted to serve IOS by registered mail, return receipt requested: this time addressed to "Investors Overseas Services, Ltd., 147 Rue de Lausanne, Geneva, Switzerland" (the "Geneva Address"). However, while the Geneva Address was one which plaintiff could readily have used two years earlier, at which time it had indeed been the executive headquarters of IOS, by February 1974 it was no longer a proper address for service upon IOS. For in August, 1973, more than five months before that "service," IOS had gone into liquidation in Canada, its corporate domicile, and its affairs had been placed under the

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control of court-appointed Liquidators. Moreover, while plaintiff again attempted service at an improper address he also totally neglected to give the Liquidators notice of this purported re-service -- although he was fully aware of the pendency of liquidation proceedings against IOS. Nor did he even so much as telephone your deponent's firm to advise that he was attempting to re-serve IOS -- although he was fully aware of your deponent's representation of IOS in connection with this matter. Your deponent's firm was first informed of the purported second service by representatives of the Liquidators on approximately March 5, 1974, shortly after the Liquidators themselves first learned of it.*

6. It will hereafter be demonstrated that both the original and second attempts at service were and are totally inadequate to establish personal jurisdiction over IOS herein. Indeed it will be shown that:

Both services were technically and substantively deficient for failure to comply with the relevant provisions

Upon learning of plaintiff's second belated attempt at service, your deponent's partner, Bernard Mindich, called plaintiff's counsel to inquire whether this new attempt was intended to be a concession of the invalidity of plaintiff's original attempt at service. Mr. Mindich explained to plaintiff's counsel that if such a concession was intended it would obviously not be necessary on this motion for IOS to burden the Court with elaborate argument in demonstrating the invalidity of such prior service. However, plaintiff's counsel -- apparently desiring to wear both belt and suspenders (no matter how flimsy each might be) -- refused to make the requested concession, asserting that if his more recent service was ultimately deemed insufficient he would continue to rely on his earlier attempt. Under the circumstances it continues to be necessary to set forth in detail herein IOS's position regarding the invalidity of both of plaintiff's attempts at service.

of the United States securities laws and the Federal Rules of Civil Procedure in that the addresses to which service was mailed were not addresses at which IOS was "found";

Both services were improperly dispatched and improperly attended to thereby failing to comply with the applicable provisions of the Federal Rules of Civil Procedure; and

Both services were further constitutionally deficient under the Due Process clause
because they were not made in a manner reasonably calculated to provide adequate notice and an opportunity to defend.

Included in the latter circumstance is the fact that plaintiff engaged in severely prejudicial delays in even attempting to accomplish service on IOS. That fact, of course, provides a completely separate ground for dismissing this action (see ¶ 20-27, infra) and indicates that at this late stage of the proceedings plaintiff could not properly achieve service on IOS in any event. By virtue of this and further by virtue of plaintiff's inability to establish that IOS has, or had, the necessary minimal contacts with this jurisdiction to provide a constitutional basis for personal jurisdiction herein, your deponent is not merely requesting a guashing of service but is respectfully requesting that the action be totally dismissed as to IOS.

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- (i) Plaintiff's attempted service at the London Address was defective because IOS was not "found" there, as required for proper service.
- 7. Plaintiff's attempted service on IOS at the London Address was made in 1972 in alleged conformity with the requirements of § 22(a) of the Securities Act of 1933 (15 U.S.C. § 17v(a)), § 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa), and Rules 4(e) and 4(i) of the Federal Rules of Civil Procedure. These sections taken together would in a proper case permit service by registered mail return receipt requested dispatched by the Clerk of the Court to an "address" where a defendant is "found".* However, in clear violation of the foregoing sections and rules the plaintiff failed to effect proper service, because IOS was in fact not "found" at the London Address.
- 8. That IOS was not "found" at the London Address is established by the affidavit of Edward A. Stoltenberg ("the Stoltenberg Affidavit") which is served and submitted simultaneously herewith. (Mr. Stoltenberg was formerly an accountant with Arthur Andersen . Co. assigned for some time to the IOS account and subsequently became an officer of certain IOS related companies. Accordingly, he was fully familiar with IOS' corporate

^{*} It should be noted that the statutory availability of this means of acquiring in personam jurisdiction over a defendant is premised upon the action indeed being properly brought under the 1933 Securities Act or the 1934 Securities Exchange Act. Thus, absent subject matter jurisdiction under those statutes, see 33-37 infra, there would be no basis for utilization of the mailing provisions of Rule 4(i), and in personam jurisdiction would ipso facto fail. The converse, however, is not the case. For even if subject matter jurisdiction exists, personal jurisdiction cannot be obtained unless: (1) the plaintiff complies with the controlling statutes, rules and constitutional provisions governing service of process -- which plaintiff here has failed to do (see ¶¶ 7-19); and (2) the defendant had sufficient contacts with the jurisdiction to satisfy the due process clause -- which plaintiff cannot show (see ¶¶ 28-32).

structure and administrative practices during the period relevant herein). The Stoltenberg Affidavit makes clear that IOS was not "found" at the London Address, in that neither at the time of the purported mailing to it nor at any other time relevant herein did IOS maintain an office or otherwise transact business at that address.* While the Stoltenberg Affidavit notes that certain separate and distinct entities indirectly related to IOS were at some point located at the London Address, the Affidavit conclusively establishes not only that IOS itself was not found at that address, but that even those other companies had completely vacated the premises by September of 1972, or approximately three to four months before service was attempted by the plaintiff herein.

9. Plaintiff has not and cannot dispute the foregoing. The only "evidence" that plaintiff has heretofore put forth to establish the claimed accuracy of the London Address for his original service is a "service list" allegedly found by him in the court file in another action pending in this Court (i.e., SEC v. Vesco, et al., 72 Civ. 5001 [C.E.S.]) on which the London Address erroneously appears as an IOS address. Apparently based solely on the existence of this "service list" plaintiff saw fit to advise this Court, in one of his affidavits in support of his application for a default judgment, that "plaintiff served the complaint in

As the Court will note, the Stoltenberg Allidavit is dated December 3, 1973, and refers to a "motion to vacate" plaintiff's default judgment against IOS. The affidavit was originally solicited for submiss on in connection with IOS' planned motion to vacate the default judgment against it, the need for which was obviated by Judge Ryan's order of December 5, 1973. However, while the affidavit contains certain "recitals" which are no longer germane because of the different nature of this motion, its substance, concerning the alleged service on IOS at the London Address, continues to be directly pertinent.

this action upon IOS at the very same address employed by the Securities and Exchange Commission in its action against IOS. " (Emphasis addeu.) (Affidavit of Sidney Silverman, dated September 20, 1973, p. 2 ["September 20th Silverman Affidavit"], a copy of which is annexed hereto as Exhibit "A"). But plaintiff's counsel was simply in error in this representation. Whatever function the "service list" may have had in the Vesco action, the London Address was not that at which any service was actually accomplished upon IOS. Rather, as I am advised by counsel in that litigation, IOS was actually served in the Vesco proceeding by special arrangement with IOS counsel (reserving all objections to jurisdiction) at a solicitor's office at 15 Devereux Court, Essex Street in London, not at "99 Aldwych". Moreover, the offical file of this Court readily confirms that this was indeed how and where IOS was served in that action. (A copy of the SEC's affidavit of service as filed in the Vesco matter and establishing the foregoing is annexed hereto as Exhibit "B").*

port his claim that IOS was "found" at the London Address, and hence that IOS could be served there, by distorting the facts concerning the return on the alleged service. Thus, in another of plaintiff's counsel's affidavits in support of his application for a default judgment (affidavit of Sidney Silverman, dated September 11, 1973 ["September 11th Silverman Affidavit"], a copy of which is annexed hereto as Exhibit "C"), he states without qualification that

^{*} In view of this fact it is truly astonishing that plaintiff's counsel represented to this Court that he had "examined the files in the <u>SEC</u> v. <u>Vesco</u> matter" and that he made service "at the very same address <u>employed</u> by the [SEC]." (Exhibit "A", p. 2). (Emphasis added.)

Annexed hereto and marked Exhibit "B" is a copy of the envelope sent to defendant IOS. As noted on the envelope, defendant IOS refused to accept service.

-- Exhibit "C", p. 5 (Emphasis added.)

However, an examination of the envelope referred to by plaintiff's counsel actually indicates a total absence of anything that would justify the conclusion that the "refusal" was the act of "defendant IOS". (A copy of the envelope is annexed hereto as Exhibit "D".) All that is clearly demonstrated is that plaintiff's envelope was apparently returned to him with the marking "Refused", unidentified as to origin, accompanied only by certain illegible scribblings which appear to be initials of a wholly unknown person.* Of course, given the fact that IOS was not at the premises in question when service was attempted, it is highly improbable, if not impossible, that it was any IOS representative who marked the envelope "Refused".** In a case of this magnitude, plaintiff must be put to a much stronger test of proof and a higher standard of accuracy with respect to his claims of purported service.

11. It is further noteworthy that in the September 20th Silverman Affidavit (Exhibit "A"), plaintiff's counsel seems to have moved from his original bold position that "IOS refused" service to the more accurate statement that

^{*} It is interesting that contrary to what also might be considered a usual practice, the marking in question was apparently not on the return receipt itself but rather on the envelope.

^{**} It is also significant that the envelope was apparently unopened by whomever it was that marked it refused (see Exhibit "D", showing an apparently unbroken stamp) and the envelope bore no official markings which might have suggested that it contained an important legal document. (See ¶ 12, infra.)

the envelope containing the summons and complaint in the instant suit was returned marked "REFUSED".

-- Exhibit "A", p. 2

Conspicuously absent from this assertion are the words "by defendant IOS". However, in this September 20th Silverman Affidavit, plaintiff's counsel -- while apparently tacitly abandoning the square representation contained in his September 11th Affidavit -- nonetheless sought to leave this Court with the impression that the handwritten notation "Refused" was placed on the envelope by a representative of IOS. Thus, in the September 20th Silverman Affidavit it is conjectured that this Court could

take judicial notice that, pursuant to the usual practice of post offices, if IOS were not at the address designated on the envelope, the envelope would have been stamped "INCORRECT ADDRESS" or "ADDRESSEE UNKNOWN".

-- Exhibit "A", pp. 2-3

But this contention borders on the absurd. Not only can judicial notice obviously <u>not</u> be taken of so obscure a fact bearing on so crucial an issue as jurisdiction (see IOS Memorandum of Law, p. 10), but we would respectfully point out that, given the linguistic idiosyncracies of a nation such as England, which insists upon calling e¹ ators "lifts" and girls "birds", one must proceed with special circumspection in determining what nuance to ascribe to the meaning of the word "Refused" placed on an envelope by an unknown -- but presumably English -- hand.

12. Nonetheless, based on conjectures and assertions wholly without support in the record herein, plaintiff's counsel insisted in his September 20th Affidavit not only that "defendant

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IOS has had sufficient notice", but that it "has chosen to ignore this Court's process". (Exhibit "A", p. 3.) Both parts of this statement are highly misleading. As to the first, the fact is that, apart from the wholly inadequate service, IOS received no notice, much less "sufficient notice" that it had allegedly been made a party to this action by service.* Thus, notwithstanding that plaintiff had allowed a year to elapse after this action was filed without even attempting to serve IOS -- thereby lulling IOS and its representatives into thinking that plaintiff would not seek to make IOS a party** -- and notwithstanding that the "service" was returned marked "Refused", plaintiff thereafter made no attempt whatever to give IOS any notice, formally or even informally, that it had been "served". Moreover, your deponent would further note that the envelope in which process was allegedly contained bore the return address not of this Court but of plaintiff's counsel, manifestly giving no notice that it contained matters of an official nature. Thus, the inference that plaintiff would have this Court draw -- that IOS deliberately ignored this Court's process -- is wholly without support. Moreover, while your deponent's firm is counsel to IOS only through wholly independent Court-appointed Liquidators and hence has no brief to

^{*} One learns to read plaintiff's affidavits with extreme care. It is true, as he may be saying, that IOS had "notice of this action", since, for example, its former counsel, Messrs. Wilkie, Farr & Gallagher, are counsel for another defendant herein and were still counsel for IOS in many other matters when this action was filed. But, "notice of this action" and notice that plaintiff -- after a year of studied inaction -- had attempted to serve defendant IOS in this action are two entirely different matters.

^{**} This purpose is not difficult to understand in light of the admitted view of plaintiff's counsel that IOS will probably not be able to satisfy a judgment against it (see Exhibit "C", p. 5).

present for what might generally have been questionable practices of IOS' prior management, it is submitted that plaintiff's charge is also totally without basis in IOS' past history. Whatever else the now notorious history of IOS may suggest, there is nothing in the record here or anywhere that IOS was in the habit of rejecting service or "ignoring" process. On the contrary, IOS was at the time of the alleged service appearing in and actively litigating a number of substantial actions against it, including the S.E.C. v. Vesco action in this very Court. Additionally it is of course highly unlikely that IOS would have deliberately ignored this Court's process in a \$110,000,000 action and run the risk of having a default of that magnitude entered against it.

resentations about the manner in which IOS was allegedly given notice that it was a party herein force one to confront the hard question of why plaintiff decided to address mail service upon IOS to the London Address in the first place. If plaintiff had sincerely been interested in making proper service or at least giving fair and adequate notice to IOS of this proceeding he need only have referred to the 1969 prospectus upon which his own litigation is based. That prospectus clearly sets forth that the address of the "principal executive and administrative offices" of IOS were in Geneva, Switzerland, and that IOS maintained a major office in Ferney-Voltaire, France. But, nowhere does the prospectus list "99 Aldwych" in London as an IOS address. Nevertheless, plaintiff totally failed even to attempt service at any other address.* The

^{*} Indeed, plaintiff's second very recent attempt at service, which is discussed further below, was addressed to "147 Rue de Lausanne" in Geneva, Switzerland which apparently was an active

unhappy implications of the foregoing are compounded by the well-known fact that during 1971 and 1972 there were published count-less articles, and even books, on IOS, its litigation, its law-yers, its business, and its offices. Indeed, plaintiff submitted two chapters of one of these books as an exhibit to his affidavit dated May 12, 1972. Certainly plaintiff's counsel was ingenious enough to find access to the New York Times, the Wall Street Journal or any one of a number of sources from which he could easily have determined a true and active location for IOS and the names of its agents and lawyers. Moreover, had plaintiff only looked beyond the "service list" in the files of the SEC v. Vesco case, or had he read any one of a number of several front page reports

[Footnote continued]

address of IOS at the time of plaintiff's original attempt at service -- although by February 1974 it no longer was. Moreover, proof that plaintiff knew IOS' principal Geneva address when he originally attempted service appears elsewhere in plaintiff's own papers in support of his motion for class action status filed in April, 1972 -- eight months before the alleged original service herein was attempted (see Swiss complaint against the "Administrative Council" of IOS (English translation), Exhibit "A" to Affidavit of Jewel H. Bjork, Esq., dated April 7, 1972, a copy of page 1 of which is annexed hereto as Exhibit "E"). Interestingly, the chief purpose of those papers taken as a whole was to demonstrate that no action similar to this one could be maintained under Swiss law, and that "therefore" the class action should go forward in New York. (Affidavit of Joan J. Harnes, dated April 7, 1972, pp. 4-5, a copy of which is annexed hereto as Exhibit "F"). The conclusion makes sense only on the assumption that Switzerland is the only other country which might provide a forum for this While that assumption is in fact unsound, as the affidavits of foreign law heretofore submitted by the other defendants demonstrate, the fact that plaintiff made it demonstrates his knowledge that IOS operated from Switzerland. Interestingly, in December, 1972, several weeks immediately prior to plaintiff's attempted service on IOS at the London Address another defendant in this action (Investors Overseas Bank, Ltd.) had supplied plaintiff with many additional documents relating to the transactions herein, which upon the most simple examination disclose over and over that IOS' principal offices were then in Geneva, Switzerland.

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in the <u>New York Law Journal</u>, he might have discovered that Messrs. Poletti, Freidin, Prashker, Feldman and Gartner of New York City had been representing IOS in connection with that litigation and certainly could have supplied him with an active address. If plaintiff seriously intended to put IOS on <u>notice</u> of this action, he could very easily have done so. That he did not, suggests very strongly that he never intended to.

- herein that plaintiff did everything possible to minimize the likelihood that IOS would in fact receive his original attempt at service or other actual notice of its status in this action. One is
 almost drawn to the conclusion that plaintiff deliberately chose
 an obscure "address," where IOS had no office and transacted no
 business, on the gamble that he might thereby avoid giving reasonable notice of his desire to make IOS a party while creating a
 tenuous legalistic argument that IOS had been served. But if this
 is so, it is submitted that the gamble was lost, because, as is
 made clear hereinabove and in the Stoltenberg Affidavit, he "served" IOS at an address at which IOS had no office and never had
 had an office, which was vacated in September 1972 by every entity
 even colorably related to IOS, and hence an address where IOS was
 not "found."
- (ii) Plaintiff's attempted service at the London Address was defective because plaintiff did not obtain a proper return of service.
- 15. Not only could IOS not have been properly served at the "99 Aldwych" address, but the undisputed facts here show that

plaintiff did not even properly pursue or obtain a return of service at that address, and thus -- in contravention of Rule 4(i)(2) -- there is no reliable evidence that IOS received notice of its having been "served". Thus, although plaintiff's counsel asserted in his motion papers seeking a default judgment herein that service upon IOS had been attempted by registered mail, return receipt requested, he refrained from stating that the return receipt attached to the clerk's certificate of mailing plainly shows that proof of receipt was to go to the plaintiff's attorney rather than the clerk of the court. (A copy of such proof is annexed hereto as Exhibit "G".) Interestingly, in the other instances of service upon a foreign defendant herein, as reflected in the Court file, proof of receipt was properly directed to the clerk of the Court and not to plaintiff or his attorney. (Copies of such proofs are annexed hereto as Exhibit "H".) Having failed to require a proper return to the clerk, the plaintiff thereby deprived IOS of the clearly intended protection of Rule 4(i) of the Federal Rules of Civil Procedure which is designed to have the clerk, not the party, supervise the mailing of the summons and complaint to be sure that proper notice is in fact given. Had the return receipt actually been addressed back to the clerk, the clerk may very well not have been satisfied with a mere notation of the word "Refused" on the envelope without any indication as to who placed such comment there, or what it meant. As is more fully explained in the accompanying memorandum of law, under the aforesaid circumstances it would have been incumbent on the clerk to either remail or to advise the plaintiff to seek some other means for achieving service upon IOS, perhaps pursuant to Rule 4(i)(1)(E) which permits the Court to direct a means of service. Certainly, the clerk of this

Court would not -- as plaintiff apparently did -- simply have squirreled away all "evidence" that IOS had been "served" and, after nine months of silence and inaction, produced it only for the purpose of supporting an application for a \$110,000,000 default judgment. At a bare minimum, the Clerk would not -- as plaintiff did -- fail to file and docket the return, which would have at least made it a part of the public record.* Yet this wholly ambiguous, carefully concealed "return" -- an envelope marked "Refused" -- is the sole "evidence" of plaintiff's "compliance" with the requirements of the applicable statutes. The record is thus bare of any evidence except that plaintiff consistently disobeyed these requirements. Moreover, it is submitted that these derelictions were far from technical, but significantly contributed to the position of ignorance concerning its status in this action in which IOS remained during the critical periods involved herein.

- (iii) Plaintiff's attempted service at the Geneva Address also violated the applicable statutes and rules.
 - 16. Plaintiff's purported second service, in February,

the <u>docket entries</u> indicate that the defendant I.O.S. Ltd. was <u>served</u> with a copy of the complaint and summons by registered mail, return receipt requested, in accordance with Rule 4(i)(1)(D). (Emphasis added.)

In fact, all that the <u>docket entry</u> says is "Filed certificate of <u>mailing</u> complaint and summons to IOS, Ltd. 99 Aldwych London, W.C.2 England, registered receipt No. 315970". (Emphasis added.) (The aforesaid certificate is annexed to Exhibit "C" hereto; a copy of the page of the docket sheet herein on which the aforesaid entry appears is annexed hereto as Exhibit "I".)

^{*} This failure, however, did not stop plaintiff's counsel from apparently preparing and obtaining, and then relying upon, a certificate from the Clerk of this Court to the effect that:

1974, at the Geneva Address, was also technically and substantively defective. In the first place, like the "service" at the London Address, this second attempt at service failed to comply with the mandate of the securities laws that process be served where a defendant is "found." In this connection, we would emphasize that the plain statutory language, couched in the present tense, requires a plaintiff to effect service at a present address of a defendant. But, although IOS had had its principal executive offices in Geneva during its years of active operation, by the time plaintiff got around to attempting service at the Geneva Address -- more than two years after this action was instituted, and more than a year after the "service" at the London Address -- IOS was no longer "found" at the Geneva Address. For, by that time, IOS had been put into liquidation in the country of its corporate domicile, Canada. Indeed, the liquidation proceedings against IOS had been commenced on August 30, 1973, more than five months before the purported service at the Geneva Address. Moreover, plaintiff was fully aware at the time of this attempted service of the fact that such liquidation proceedings were in progress, and that Co-Liquidators of IOS had been appointed. It is respectfully submitted that, under these circumstances, IOS could be "found", within the meaning of the securities laws, only at the places of business of the Co-Liquidators. Just as an active coproration is held to be "found" only where it conducts business accivities -in order to assure that actual notice of a claim is received at a location where decisions about the affairs of a corporation are made (see IOS' Memorandum of Law, p. 7) -- so a corporation in liquidation is "found" in the persons of its liquidators. This is manifest in the statute pursuant to which IOS was put into

liquidation where it is expressly provided that "the [insolvent] company, from the time of the making of the winding-up order, shall cease to carry on its business, except in so far as is, in the opinion of the liquidator [or liquidators], required for the beneficial winding-up thereof ***," and that "upon the appointment of the liquidator[s] all the powers of the directors cease, except in so far as the court or the liquidator[s] sanctions the continuance of such powers." Winding-Up Act of Canada §§ 19, 31, R.S.C., ch. W-10. By virtue of these provisions all decisions about the affairs of IOS -- including those concerning litigation against it -- are made exclusively by or on behalf of the Co-Liquit dators, and thus a substantial argument may be made that IOS is "found" only at their places of business. See IOS Memorandum of Law, pp. 6-7, 11-12. Moreover, plaintiff not only did not attempt to serve IOS through its Co-Liquidators, but failed even to give the Co-Liquidators, or their agents or attorneys, any notice whatever of his attempted service at the Geneva Address. Once again, as with the "service" at the London Address, the practical result was to leave the individuals with actual responsibility for the affairs of IOS -- including the conduct of litigation against it -- completely in the dark that IOS had allegedly been served. Thus I am advised that actual knowledge of this "service" was not acquired by the Co-Liquidators until more than a month after it was apparently attempted at the Geneva Address. It is submitted that this failure by plaintiff to give the Co-Liquidators even informal notice of the service evidences his intention once again to make only perhaps technically defensible service -- but one that was in reality meaningless and perfunctory.

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17. Even if IOS could, in 1974, have been "found" at some place other than its Liquidators' place of business the Geneva Address used by plaintiff could not have been that other place. Indeed, your deponent has been advised that while IOS, technically retained a mailing address at "145" (not "147") Rue de Lausanne, in February 1974, when plaintiff attempted his second service, the were, at that time, no IOS employees at that address, much less persons responsible for attending to legal matters. Indeed, I am advised that the only persons functioning at the Geneva Address, in February 1974, were employees of a distinct -- although related -- company in the IOS complex, and that the service was in fact received by a purely ministerial employee of that other company. It is perhaps indicative of the insufficiency of the service upon such a person that the served papers, when finally forwarded to an IOS employee in Ferney-Voltaire, France, were, I am advised, mingled inconspicuously among numerous other documents and items of correspondence.*

18. It is finally noteworthy that like plaintiff's first purported service, the "service" at the Geneva Address violated not only the applicable statute requiring service where the defendant is "found" but violated the Federal Rules of Civil Procedure relating to the manner of dispatch and return of service as well. Thus, once again, it appears that both the dispatch and the return on the second alleged service were improper and not in compliance with the requirements of Rule 4, since the second "service"

^{*} It is further noteworthy that service was not addressed to "I.O.S., Ltd.", (the proper corporate name of the defendant herein), but rather was addressed to "Investors Overseas Services, Ltd.", the name of still another distinct and separate corporation in the IOS complex. (See envelope used for service, a copy of which is annexed hereto as Exhibit "J").

too was dispatched in an envelope bearing the return address of plaintiff's counsel rather than that of this Court (see Exhibit "J"), and that the return receipt was directed to plaintiff's counsel rather than the Clerk of this Court. (Compare ¶ 15, supra.)

- (iv) There are fatal constitutional defects in plaintiff's attempts at service.
- 19. Finally, the result of plaintiff's attempts at "service" -- even if they had technically satisfied the various statutes and rules, which they did not -- was to deprive IOS of that timely and adequate notice which the due process clause of the United States Constitution guarantees to it, and thus any construction of those statutes and rules which sustains either "service" is foreclosed by the Constitution. If one now steps back and views the totality of the facts pertaining to the purported attempts at service herein, it is clear that they do not measure up to the standard of notice reasonably calculated to apprise IOS of this action and of its right to defend. Thus, viewing the facts in chronological sequence, it may be seen that:
 - (a) This action was commenced in December of 1971. Operating on the premise that the action was one brought under the United States securities laws in which extraterritorial service by mail was available pursuant to Rule 4 of the Federal Rules of Civil Procedure, plaintiff promptly caused such service to be made by the Clerk with respect to a number of foreign defendants other than IOS.

- (b) No attempt was made at that time to serve IOS either by mail or by any other means -- despite the fact that, assuming the validity of plaintiff's premise that the securities laws confer subject matter jurisdiction here: (i) service by mail was at least arguably equally available as to IOS; (ii) plaintiff was fully aware of the then headquarters address of IOS in Geneva; and (iii) that headquarters address was then open and notorious.
- (c) Plaintiff proceeded to wait a full year during which the action was actively proceeding against IOS' co-defendants without making any attempt to serve IOS, thereby lulling IOS into a belief that plaintiff had no intention of serving it. Then, in December of 1972, plaintiff proceeded to "serve" IOS by mailing (or causing to be mailed) a copy of the summons and complaint. Still carefully eschewing the rather obvious course of addressing such mailing to IOS' then well-known headquarters office in Geneva, plaintiff rather chose to address such mailing solely to an obscure address in London, which as heretofore detailed, was in fact not an address of IOS at all. However, even if it had been, it would at best have been that of a branch office of the company and not that of its headquarters or other principal office.
- (d) The envelope -- which bore the return address of plaintiff's counsel, not that of the Clerk of the Court and thus on its face gave no indication of any

official nature of the contents -- not surprisingly was returned unopened and marked "Refused". Accordingly, whatever the technical legalities might be, the "service" had not accomplished the giving of any actual notice to any ICS representative of the fact of purported service.

- (e) Persons to whom plaintiff's counsel could have communicated the fact of purported service were readily available. The Willkie, Farr firm had served for many years as general counsel to IOS, had only recently resigned at the time of the bringing of the SEC v. Vesco action and was actually representing another defendant in the present action. The Poletti, Freidin firm was actively appearing on behalf of IOS in the Vesco matter, a widely publicized action and one of which plaintiff's counsel was concededly fully aware.
- (f) Plaintiff's counsel nonetheless apparently made no attempt whatsoever -- formally or informally -- to advise any person having ties to IOS (including former or present counsel located in New York City) of the fact that belated service had ostensibly been made upon IOS one year afer the commencement of the action.
- (g) Plaintiff's counsel made no attempt to docket any return on the alleged service, which would have given some public notice of his contention that IOS had been served.

- (h) Instead, plaintiff proceeded to wait another nine months, while the basic action continued to be actively litigated by co-defendants, and then -- two weeks after the commencement of the winding-up proceedings against IOS in the New Brunswick courts and at a time when the corporate affairs of IOS were in hopeless disarray -- chose that moment to move for entry of a default judgment.
- Ryan of this Court, attended by your deponent on behalf of the IOS Liquidators, plaintiff consented to a vacating of his default judgment on December 5, 1973, and while he was on notice that there were substantial objections to his prior "service" on IOS, he chose to wait still another two months before attempting further service. And of course, when he finally did this he again used an insufficient address and failed to even notify your deponent's firm or the Liquidators that he was indeed attempting further service -- although the roles of the Liquidators and of your deponent were now well known to plaintiff.

It is submitted that these facts make it clear that the constitutional requisite, that sexvice he made in a manner reasonably calculated to give notice and an opportunity to defend, was not met in the present case. See IOS Memorandum of Law, Point I(B).

- B. The complaint should be dismissed because plaintiff's unexcused and unexplained failure to serve IOS in a timely manner constitutes a failure to prosecute as to IOS
- 20. Rule 41(b) of the Federal Rules of Civil Procedure authorizes this Court to dismiss any claim against a defendant "for failure of the plaintiff to prosecute ***." It is respectfully submitted that plaintiff's lengthy, unexcused and prejudical delay in "serving" IOS constitutes a text-book case for the application of this provision..
- defective for the reasons already set forth, but it is undisputed that the first purported "service" was not made until fully a year or more after the initiation of this action. During this lengthy period plaintiff thus not only demonstrated a lack of reasonable diligence in prosecuting as to IOS, but was guilty of a total failure of prosecution. This conduct vis-a-vis IOS is all the more striking when contrasted with the fact that, as the files in this action clearly demonstrate, he served all the other defendants, except Cornfeld, within less than two months of the filing of the complaint. This conduct -- unexplained and unexcused as it is -- is plainly inconsistent with the most elementary responsibility of a litigant, namely to pursue his claims expeditiously and in good faith.
- 22. Plaintiff has never offered any explanation for his failure to effect timely service upon IOS, and indeed could not do so. Thus, if one assumes his premise that there is subject matter jurisdiction herein under the securities laws, and that IOS had the constitutionally requisite contacts to subject it to personal jurisdiction in this Court, proper service by mail was available

to him at all times under Rule 4(i)(1)(D) -- and was indeed employed by him to serve other defendants herein -- as was service in the various other manners permitted by Rule 4(i). Nor is there any basis for any claim by him that, notwithstanding the availability of these modes of service, IOS could not be reached by them in the appropriate period immediately after the filing of the complaint, and that he was somehow compelled to make no effort to serve IOS at that time. On the contrary, IOS' offices were open and notorious during that period. Moreover, the record of this action makes it clear that service on IOS was not originally intended or desired. Indeed, after service by plaintiff on all other defendants, he went on to actively litigate as against them, filing motions, taking discovery and otherwise behaving as though he in fact wished to secure a full and prompt determination of his alleged claims as against them while not including IOS at all. Thus, from both his conduct vis-a-vis IOS, and the contrast between that conduct and the manner in which he proceeded as against the other defendants herein, it is manifest that plaintiff had no intention of actually litigating his claims against IOS.*

23. This conclusion is buttressed irresistibly by the additional fact that <u>after</u> plaintiff purportedly "served" IOS, more than a year after the action was filed, he took no steps to prosecute as to IOS until still an additional nine months had elapsed, and the "step" he then took was to move for a default judgment -- at a time when IOS had just gone into liquidation and

^{*} As already noted herein, this purpose is readily understood in light of plaintiff's counsel's previous admission that IOS will probably not be able to satisfy a judgment herein (See fn. p. 12, supra.).

its affairs were in a state of hopeless disarray, so that there was no practical possibility that it might appear and oppose the motion.* Moreover, as is fully described above, plaintiff's motion for a default was based upon what can charitably be described as at best a series of very partial representations to this Court about the facts surrounding the alleged service on IOS, and thus the facts on which the very legality of any judgment against IOS would depend. Further evidence that plaintiff has never had a good faith purpose to actually litigate his claims as against IOS is supplied by the otherwise inexplicable fact that, after plaintiff's alleged original "service", and notwithstanding his contention that IOS was thereby made a party hereto, plaintiff made no effort to take any discovery against it -- as he proceeded to do with respect to all of the other defendants except Mr. Cornfeld. This failure is nothing short of astonishing, considering that IOS was, according to the allegations of the complaint, the prime conspirator in a \$110,000,000 scheme to defraud investors in dozens of countries. In this connection, we would note that on plaintiff's theory that he had served IOS he could have deposed it as a party but that even if it had not been served it could have been deposed as a non-party witness.** Moreover, plaintiff gave no notice whatever to IOS that he was taking discovery of other defendants, so that it could select counsel and participate therein.

^{*} An application to place IOS in liquidation had been filed on August 30, 1973. A provisional liquidator was appointed on the same day. It was less than two weeks later that plaintiff moved to enter a default against IOS and did so without any notice to the provisional liquidator whose appointment was undoubtedly then known to plaintiff's counsel.

^{**} Thus, two of the seven depositions actually taken by plaintiff were of non-party witnesses.

Instead, as stated above, plaintiff (a) refrained from docketing the return on service; (b) gave no actual notice of the action in the face of the fact that the alleged service had been returned marked "Refused"; and (c) generally continued to conduct this action as though IOS were still not a party hereto. The inference is irresistible that plaintiff's purpose was precisely not to prosecute as to IOS, but to keep it wholly in the dark that it allegedly was a party hereto.

24. Moreover, plaintiff's dilatory and truly irresponsible course of conduct has produced a situation where IOS would be severely prejudiced if it were now required to begin its defense of this action. Thus, as is fully set forth in the opinion of Mr. Justice Dickson of the New Brunswick Supreme Court ordering the liquidation of IOS, there were major changes in the ownership and control of IOS between the time this action was initiated and the date on which plaintiff's original "service" was purportedly effected. Indeed, Justice Dickson describes the condition of the company at that time and thereafter as one of "irrevocable disarray".* As a result, the relevant records and witnesses could now be assembled, if at all, only with great difficulty and at great expense. The difficulties that would confront the Liquidators are compounded by the fact that, during the period of plaintiff's delay, certain former responsible officials were imprisoned, ** or became fugitives, so that it would now be extraordinarily diffi-

^{*} A copy of Mr. Justice Dickson's opinion is annexed as Exhibit
"F" your deponent's affidavit in support of IOS's alternative motion for a stay of this action as against IOS. It has
not have annexed hereto in order to keep the bulk of these
pager as a minimum. The quoted language may be found at page
17 of said Exhibit "P".

^{**} Apparently two of such officials, Messrs. Cornfeld and Meissner have recently been released on bail.

cult, if not impossible, to interview them or otherwise investigate their conduct.* Nor was there any opportunity at some earlies point in time to memoralize their knowledge of the facts at issue in this action, in light of plaintiff's lengthy failure to serve IOS and the impression thereby created that he had no intention of making IOS a party hereto.

Finally, and, it is submitted, decisively, during plaintiff's nine-month delay between the effectuation of his purported original "service" and his motion for a default judgment, IOS went into liquidation and its affairs are now wholly in the hands of court-appointed Liquidators. Thus, if IOS is compelled to proceed herein: the result will be that -- solely because of plaintiff's delay -- the Liquidators will have to begin their defense from scratch, and the burden of all of the efforts that go into the preparation of the defense of any suit will fall upon them, although they have only recently been appointed, have complex statutory responsibilities to discharge in their efforts to assure an expeditious and orderly winding-up of 10S, and are, moreover, legally obligated to act as to these matters with considerable despatch. Additionally, we would note that if IOS is compelled to proceed, all of the expense of defending this action will fall on the estate, and thus ultimately on the creditors of IOS -- again, solely because of plaintiff's delay and neglect. As is demonstrated in the IOS Memorandum of Law, on much less compelling showings of "prejudice" than this, courts have dismissed actions for "failures to prosecute". Moreover, the law is clear

^{*} Perhaps the most serious single instance of prejudice to IOS occasioned by plaintiff's delay and neglect is the fact that, as these motion papers were being completed, the newspapers reported the untimely death of Edward M. Cowett, a former top official of IOS who, I am advised, was primarily in charge of IOS' activities in connection with the offerings at issue herein, and hence was the most knowledgeable individual about IOS' role therein.

that "prejudice" to the defendant is not really the significant issue, but rather the main concern is plaintiff's lack of diligence (id. at p. 23) -- which is clearly established herein.

- 26. Of course, what is said above with respect to plaintiff's original attempt at service is doubly true -- and even more clearly warrants, and indeed requires, dismissal of the complaint -- with respect to plaintiff's second and more recent attempt at service. For that second service not only comes more than two years after commencement of the action and more than one year after the first defective attempt at service, but was not even undertaken until almost two full months of additional delay after Judge Ryan in December of 1973 induced plaintiff to consent to a vacating of the default judgments against IOS and Cornfeld.
- 27. It is respectfully submitted that these circumstances demonstrate that plaintiff's conduct of this lawsuit as to IOS has been a series of dilatory and almost harassing acts and omissions, wholly inconsistent with the obligations of a responsible litigant.
- C. The complaint should be dismissed as to IOS because, even aside from defects in the manner of service, IOS is not and was not subject to the personal jurisdiction of this Court.
- IOS was not properly or diligently served, as is fully demonstrated by the facts heretofore set forth, but, further, because it is clear from the record herein that IOS was not and is not now subject to proper service in this action since it appears that IOS did not engage and does not now engage in any significant conduct in the United States. Of course, the Court could not constitutionally acquire jurisdiction of IOS unless it had the requisite minimal contacts with the United States, either at the time

of the events giving rise to the alleged cause of action, or at the time service was purportedly made. However, plaintiff has not shown that IOS did indeed have the requisite contacts, although the burden clearly rests on him to do so. (See IOS Memorandum of Law, p. 26.)

29. Indeed your deponent is advised that at all relevant times herein -- and particularly in 1969 at the time of the offerings at issue in this action, in 1972 when plaintiff first allegedly served IOS herein, and thereafter -- IOS was a foreign corporation and its principal business, as disclosed in the very prospectuses on which plaintiff claims to have relied, was the sale of mutual funds through its affiliated companies "internationally outside the United States" (Emphasis added.) (Prospectus, p. 9 (a copy of which is annexed hereto as Exhibit "K")). Its own stock was at no time listed on a United States securities exchange nor was that of any of its affiliated or subsidiary companies. Additionally, and perhaps decisively, IOS was at all relevant times subject to an Order of the Securities and Exchange Commission, dated May 23, 1967 (the "SEC Order") which expressly provided that "IOS *** shall conduct no activities subject to the jurisdiction of the Commission", and that "no IOS officer, director or employee shall engage in any activity subject to the jurisdiction of the Commission". (SEC Order ¶¶ 1(a), 5(a).) (A copy of the SEC Order is annexed hereto as Exhibit "L".) By way of background, your deponent respectfully notes that he is advised that the SEC Order was offered and accepted in settlement of Commission proceedings which had been instituted in 1966, when IOS was a registered broker-dealer, challenging the legality of various business activities of IOS itself, a wholly owned subsidiary of IOS, and certain senior officers of IOS. The Order (which terminated

the proceedings without any findings as to the alleged illegalities) specifically directed (among other things) that IOS withdraw its then existing registration as a broker-dealer; dispose of its interest in, and terminate all relationships with one of its United States affiliates; cause the dissolution of others; provide means whereby American interest-holders in a related company could terminate their ownership in that company without loss; and engage in no activities subject to the jurisdiction of the Commission. The SEC Order also directed that IOS and all of its affiliates shall "cease all sales of securities to United States citizens or nationals wherever located, except for (i) offers and sales out we of the United States (and its territories, possessions or commonwealth subject to the jurisdiction of the United States) to officers, directors and full time personnel of IOS and it subsidiaries ***." (Exhibit "L", ¶ 4.)

30. As a result of the SEC Order, IOS would have been subject to contempt sanctions in the proceedings in which the Order was entered had it conducted any business activities in the United States. We would respectfully emphasize that the Order thus established a standard of conduct for IOS of the utmost stringency: IOS was forbidden not merely from engaging in conduct that violated any provision of the securities laws, but in effect from engaging in any conduct within the Commission's jurisdiction, whether otherwise in compliance with the law or not.*

With specific reference to IOS' conduct in connection with the 1969 Offerings themselves, see ¶ 31, infra, it is especially noteworthy that, according to information furnished to your deponent by prior counsel for IOS, the SEC has at no time asserted that IOS was acting in violation of the SEC Order. Indeed, to the contrary, there was extensive correspondence between the Commission and counsel for the underwriters and for IOS -- which I

31. It should be apparent from the foregoing that if there is any basis on thich jurisdiction over the person of IOS herein could conceivably be predicated, it must be that IOS' conduct in connection with the 1969 Offerings themselves subjected

[Footnote continued]

am advised has been produced by defendant Investors Overseas Bank Limited ("IOB") to plaintiff for his inspection -- from which it appears: (a) that the SEC was informed of the offerings in advance of them (see letter of Shearman & Sterling, dated August 7, 1969, annexed hereto as Exhibit "M"); (b) that subsequent to the offerings the SEC requested information "in order for us to consider whether the offering was in total compliance with the Commission's order of May 23, 1967" (see letter of Allan S. Mostoff, Esq. dated September 25, 1970, annexed hereto as Exhibit "N"); (c) that the SEC was thereafter supplied with the information requested (see letter of John S. D'Alimonte, Esq. dated December 15, 1970, annexed hereto as Exhibit "O"); and (d) that the Commission did not assert juris-(The voluminous attachments to the last-mentioned diction. letter have not been included in the interest of keeping the bulk of this affidavit to reasonable proportions, and because they may be found as Exhibit "D" to the affidavit of Anthony F. Phillips, dated October 50, 1973, previously filed herein.)

While no contention is made that the SEC has definitely found that IOS was not "conduct[ing] *** activities subject to the jurisdiction of the Commission" in connection with the 1969 Offerings, it is submitted that the evidence of apparently satisfactory compliance with the Order and the lack of any action by the SEC is strong proof that IOS did indeed, as the SEC Order contemplated, confine its activities in connection with the 1969 Offerings to places outside the United States.

It should be noted that the correspondence referred to above also includes a letter from SEC attorney John Heneghan, dated August 24, 1969, in which he states in substance that sales to U.S. citizens resident abroad would be subject to the registration requirements of the Securities Act. (A copy of this letter is annexed hereto as Exhibit "P".) However, this point -- which in the context of an earlier letter from the Commission dated June 6, 1969 (a copy of which is annexed hereto as Exhibit "Q"), clearly relates to sales by a registered brokerdealer -- is not relevant to the issue of whether IOS conducted any significant activities in connection with the 1969 Offerings within the United States.

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it to "long-arm" jurisdiction in an action purportedly arising therefrom. However, it is submitted that the record completely fails to establish that IOS engaged in any conduct in the United States in connection with those offerings that would make it amenable to the process of this Court. Indeed, the facts as plaintiff himself has developed them show that IOS' conduct provides no basis for the assertion of jurisdiction. Thus, the record that plaintiff has developed in his extensive discovery on subject matter jurisdiction -- which is equally relevant to the in personam jurisdiction question insofar as it relates specifically to the activities of IOS -- demonstrates that all of IOS' material activities in connection with the 1969 Offerings were conducted in Geneva, Switzerland or elsewhere outside the United States. Since these record facts have already been discussed exhaustively by virtually every other defendant herein, your deponent will not burden the Court with any further detailing of them. However, by way of summary, it is noted that the following relevant factual matters have been conclusively demonstrated both in plaintiff's own record and in the motion papers of the other defendants, and establish that IOS did not subject itself to the jurisdiction of this Court by virtue of its conduct in connection with the underlying transactions involved herein:

- (a) the 1969 offerings were by their express terms, as set forth in the prospectuses, intended to be made outside the United States;
- (b) the lead underwriters were selected by IOS

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abroad, and the corporation of the underwriting group was decided upon abroad (Knowlton Deposition, pp. 14-15; Coleman Deposition, pp. 53-54);

- ing agreement among underwriters, underwriting agreement and selling agreement in the offering led by Drexel Harriman Ripley Inc.

 ("Drexel") expressly restricted offers and sales to places outside the United States (Affidavit of George P. Bischof, dated October 31, 1973 (the "Bischof Affidavit"), \$\frac{1}{3}\$, and Exhibit "A" thereto; Affidavit of Peter Grandin Gallichan, dated November 7, 1973 (the "Gallichan Affidavit") \$\frac{1}{3}\$ & Affidavit of Jacques Henri Warmelink, dated October 26, 1973 (the "Warmelink Affidavit") \$\frac{1}{3}\$ & Affidavit of Hugh Meyer Sassoon, dated November 7, 1973 (the "Sassoon Affidavit") \$\frac{1}{3}\$ & Sassoon Affidavit"
- (d) certificates of compliance with this restriction were executed by all underwriters and dealers to whom the lead underwriters sold IOS shares (Bischof Affidavit ¶¶ 4, 7 and Exhibit ¬B¬ thereto);
- (e) similar certificates were obtained by J.H. Crang & Co. in connection with the offering underwritten by it [Affidavit of Anthony F. Phillips, dated October 30, 1973 (the "Phillips Affidavit") ¶ 3, and Exhibit "B" thereto];

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- (f) all sales transactions in the Drexel offering
 were made in Europe (Bischoff Affidavit ¶ 11;
 Sassoon Affidavit ¶ 9; Gallichan Affidavit
 ¶ 9; Warmelink Affidavit ¶ 8);
- (g) no sales were made by Crang to clients with United States addresses (Phillips Affidavit ¶ 5; Affidavit of Frederick V. McAnn, dated December, 1972, ¶ 2);
- (h) the relatively few sales by Investors Overseas

 Bank to United States citizens were made only
 to employees of IOS and its affiliated companies, were consummated outside the United
 States, and were made in compliance with the
 SEC Order which permitted such sales (Phillips
 Affidavit ¶ 4, and Exhibit "D" thereto);*

As to IOS' compliance with the SEC Order, see fn., p. 32, supra. As to sales generally, it is significant to note that there is no showing at all that IOS made any sales in the offering in which plaintiff participated, i.e., the IOB offering. On the contrary, it is clear that the IOB offering was a secondary offering and that the sellers were shareholders of IOS, not IOS itself. It is further significant that despite plaintiff's bold assertion that his "purchase was made in New York" (Affidavit of Howard Bersch, dated May 12, 1972, p. 1) the underlying documents submitted by plaintiff himself wholly fail to prove or even support that crucial assertion, but appear rather to demonstrate that that single sale in question was specifically structured to be, and was, consummated outside of the United States. Thus, Exhibit "A" to Mr. Bersch's affidavit -- a "Public offering subscription form for common shares of IOS, Ltd." -- seems to indicate that plaintiff was "subscribing" for shares that would be "purchased" on his behalf by Investors Overseas Bank Limited, which was itself operating out The foregoing is particularly pertinent, in of Switzerland. light of the settled principle, discussed in the Memorandum of Law submitted herewith, that where the parties to a transaction have structured it with an eye to its jurisdictional consequences, that intention should be given effect, whenever possible. Accordingly, it is submitted that there is no basis for finding that IOS is amenable to the jurisdiction of this Court with respect to the purchase of stock by plaintiff.

(i) no significant actions, and particularly no representations in connection with the offerings were taken or made by any of the defendants in the United States (Murphy Deposition, p. 116; Coleman Deposition, pp. 84-85, 93; Ruegger Deposition, pp. 33, 39; Bischof Affidavit ¶¶ 8-11; Phillips Affidavit ¶¶ 2, 5; Affidavit of Gilbert S. Bennett, Esq., dated October 30, 1973, ¶ 2; Affidavit of Edward J. Ross, dated October 31, 1973, ¶¶ 6-8; Gallichan Affidavit ¶ 7; Sassoon Affidavit ¶ 7; Warmelink Affidavit ¶ 6).*

[Footnote continued]

Plaintiff has offered absolutely no evidence that IOS distributed prospectuses or otherwise made representations in the United States. Indeed, the only reference to a prospectus on any of the offerings even being present in the United States prior to the sa es of stock appears to be plaintiff's prior statements herein that "One [of the prospectuses], I do not remember which, may have been available to me at my office" and that the others "were available to me at my office" (Plaintiff's Answers to Interrogatories, dated February 1, 1972, p.6). These statements, at the most, establish that there were copies at plaintiff's office, at some point in time -hardly surprising or significant in light of the fact that the same Answers establish that his company "acted as a consultant to IOS" -- but not that the propsectuses were directed to plaintiff himself; moreover, carefully couched as they are in the passive voice, they wholly fail to establish that IOS distributed them at all. Additionally -- and astonishingly, considering how obviously crucial this matter is not only to the issue of personal jurisdiction over IOS, but to the fundamental issue of subject matter jurisdiction -- the only "evidence" bearing on whether any representations were made to plaintiff himself -- his statement (subsequent to the above Answers to Interrogatories) that "one [of the prospectuses] was mailed to my home in New York," Affidavit of Howard Bersch dated May 12, 1972, p. 2 -- is directly contradicted by the earlier statement that "None of the prospectuses were mailed to my home." Plaintiff's Answers to Interrogatories, dated February 1, 1972, p. 6. This kind of contradictory testimony is entitled to no weight whatever. Furthermore, even if the first of these statements is entitled to any credence, plaintiff again expresses himself in the passive voice and refrains from naming the person or entity who allegedly mailed him the prospectus.

It is respectfully submitted that this evidence demonstrates that the underlying transactions here were entirely foreign offerings and sales, and hence that this Court does not have jurisdiction over IOS by virtue of claims arising from the 1969 Offerings.

hereof and in February 1974, when plaintiff's second attempt at service was made herein, it is and was clear that IOS continued to be outside this Court's jurisdiction. Thus, by virtue of the pending liquidation of IOS, commenced in August 1973 and now going forward in Canada, it is manifest that IOS' activities have been extremely restricted. Indeed, in view of the mandate of the Winding-Up Act, pursuant to which IOS is being liquidated, it might be argued that IOS is no longer conducting "business" at all — in any jurisdiction — but rather is merely being "liquidated" for the benefit of its creditors and shareholders. In any event, after consultation with the agents of the IOS Liquidators, I have

[Footnote continued]

It is further noteworthy that the present record establishes that Mr. Edward Cowett, one of the officers in charge of the offerings for IOS, issued instructions to all IOS managerial personnel, wherever located, that no press releases, interviews, conferences of any kind in connection with the offering be held. (Coleman Deposition, p. 136.) Nor does the record bear out the allegation in the complaint (¶¶ 2(g)(iv); 10(e)) that, notwithstanding this directive, acts constituting "gun-jumping" and "market priming" were committed by IOS in this country. Indeed the only <u>question</u> asked in all the seven depositions about such activities was as to whether "Mr. Cornfeld appeared before any association of security and lists (sic; presumably, "analysts") in this country at or about the time of the IOS public offering?", to which the answer was: "I don't know." (Murphy Deposition, p. 125.) (In this connection, we might point out that the book of which plaintiff's counsel submitted two chapters with his affidavit dated May 12, 1972, discloses that the appearance to which he is apparently referring was made on February 4, 1970, more than three months after the offerings closed. C. Raw at al., "Do you Sincerely Want to be Rich" 7 (1971).)

been advised, and so advise this Court, that IOS is not now engaged in any activities in the United States, except for the continuing involvement in certain litigations and proceedings pending here which are totally unrelated to the subject matter of this action.

- D. The complaint must be dismissed for lack of subject matter jurisdiction.
- 33. The complaint herein must be dismissed for the additional reason that plaintiff still cannot show -- more than two years after this action was filed -- that this Court has jurisdiction of the subject matter of the claims alleged in the complaint. Indeed, plaintiff is unable to do so notwithstanding the fact that virtually all of the prior proceedings herein have been devoted almost solely to the precise issue of subject matter jurisidction. Thus, pursuant to an Order on Consent of this Court dated December 27, 1972, by which plaintiff obtained the right to take discovery as against six of the defendants on the issue of subject matter jurisdiction (a copy of which is annexed hereto as Exhibit "R"), plaintiff conducted seven depositions upon oral examination of parties and witnesses; additionally, he called for and obtained substantial document production by those parties. As against defendant Investors Overseas Bank Limited, he sought and obtained an oral stipulation with its counsel herein pursuant to which a substantial quantity of documents was produced to him. By further Order of this Court, dated April 2, 1973, the plaintiff was directed to complete discovery on jurisdiction under the Order on Consent by September 1, 1973. And, as the Court is no doubt aware, there were then filed motions by all of the defendants, challenging inter alia the subject matter jurisdiction of this Court.

- 34. Yet as is evident from the record thus compiled, and is described in detail in the motion papers of the other defendants herein and in the attachments thereto, there has not been and cannot be any showing that the matters complained of by plaintiff are within the subject matter jurisdiction of this Court. Rather, the record shows that in all material respects the transactions involved here were foreign transactions, structured and conducted pursuant to the laws of other jurisdictions and in such a manner as to preclude any application of the United States securities laws. Here again, it would serve no useful purpose to reiterate the detailed evidence establishing the foregoing -- the other defendants have done that at great length. Moreover, to the extent that IOS' role in particular is of relevance, it has already been discussed herein with respect to the personal jurisdiction issue. For the aforesaid reasons, it is respectfully submitted that the Court lacks subject matter jurisdiction.
- E. The complaint must be dismissed for lack of subject matter jurisdiction at least as to purported members of plaintiff's class other than American citizens resident in the United States.
- 35. It appears that plaintiff will ultimately pin all his hopes of sustaining subject matter jurisdiction herein on the fact that a trivial number of resident United States citizens -- all of whom appear to have been in one way or another associated with IOS -- were purchasers of some of the shares involved in one of the three 1969 Offerings. It has been demonstrated by the other defendants in their motion papers that the involvement of United States citizens as purchasers, by itself, and even together with certain other immaterial contacts with the United States would be

insufficient to establish subject matter jurisdiction in this

Court even as to such United States citizens. Nevertheless, your

deponent respectfully submits that even if subject matter jurisdiction under the securities laws can be based upon the mere fact

that a purchaser of securities was a resident American citizen

-- which is highly doubtful, see IOS Memorandum of Law, p. 35 -
this circumstance cannot be relied upon by foreign nationals or

non-resident citizens at least where, as here, they purchased

stock (a) outside the United States, (b) in a foreign corpora
tion, (c) not listed on a United States securities exchange, and

(d) with the intention and anticipation that their purchase was

subject to the laws other than the laws of the United States (See

Memorandum of Law, pp. 35-36).

There can be no dispute that the foreign purchasers in the 1969 Offerings clearly belong in the foregoing category, and thus any claims asserted by them would not be within the subject matter jurisdiction of this Court. Under the circumstances, it would appear that both in logic and indeed as a matter of law -- as very recently pronounced by the Supreme Court of the United States in Zahn v. International Paper Co. U.S. ___, 94 S.Ct. 505 (1973) -- their claims cannot be brought within the jurisdiction of this Court by virtue of the class action device. Thus, the IOS Memorandum of Law clearly establishes that in a class action of the nature involved here the complaint can only be pursued by those members of the class who are individually and independently able to satisfy the required jurisdictional elements of their cause of action. They cannot bootstrap themselves by the jurisdictional status of the class representative. Accordingly, whatever may be said about the ability of a United States citizen,

such as the single named plaintiff, to establish subject matter jurisdiction over his claims, it is evident from the record herein that the foreign purchasers whom plaintiff would also make part of his class must be disqualified from pursuing their claims herein because they cannot independently establish appropriate subject matter jurisdiction.

37. Under the foregoing circumstances it is respectfully submitted that this Court should at the very least dismiss the complaint herein for lack of subject matter jurisdiction insofar as it purports to assert claims on behalf of foreign purchasers.

Conclusion

For all of the foregoing reasons it is respectuflly requested that plaintiff's complaint as against IOS be dismissed.

Herbert M. Wachtell

Sworn to before me this

day of April, 1974

Notary Public

No. 03-7043310

Qualified in Branx County
Certificate filed in New York County
Commission Expires March 30, 1974

Order of Securities and Exchange Commission Accepting Offer cf Settlement, Exhibit L to Affidavit of Herbert M. Wachtell (Socurities Exchange Act Release No. 8083) .

> ADMINISTRATIVE PROCEEDING 3-497 FILE KO.:

> > ORDER ACCEPTING

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UNITED STATES OF AMERICA before the . GECURITIES AND EXCLANGE CONDUSTION

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1.0.s., 1.TD. (S.A.) 'd/b/a INVESTORS OVERSEAS SERVICES (8-0622) INESTORS CONTINENTAL (8-6948)

SERVICES, LTD. BERNARD CORNFELD EDWARD H. COWETT ALLEN R. CANTOR W. THAD LOVETT RODERT HAGLER HYMAN FELD

Securities Exchange Act of 1934

On February 3, 1966, the Commission instituted these proceedings pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 (Exchange Act) naming L.O.S., Ltd. (S.A.) d/b/a Investors Overseas Services (IOS) (a Panama corporation with principal offices at Geneva, Suitzerland, which became registered with the Commission as a broker-dealer on June 10, 1960); Investors Continental Services, Ltd. (ICS) (a wholly owned subsidiary of IOS with principal offices at New York, New York, which became registered with the Commission as a broker-dealer on Movember 18, 1958); Bernard Cornfeld (president, a director and beneficial owner of more than 10% of the equity securities of IOS and a director and indirect beneficial owner of more than 10% of the equity securities of ICS); Edward M. Cowett (a vice president of 105 and a director of 105 and secretary and director of ICS); Allen R. Cantor (senior vice-president of 10S); ". Thad Lovett (executive vice-president of IOS); Robert Nagler (a director of IOS); and Hyman Feld (president and a director of ICS and an assistant secretary of 103). The Order for Proceedings alleged violations of;

- the registration provisions of Section 5 of the Securities Act of 1933 and Section 7 of the Investment Company Act of 1940 with respect to the offer and sale of unregistered interests in The Fund of Funds, Ltd. (a foreign investment company whose portfolio consists largely of shares of investment companies registered under the Investment Company Act of 1940) and unregistered participations in the IOS Investment Program which is a program sponsored by IOS for the accumulation of interests in The Fund of Funds, Ltd.;
 - 2) Section 17(d) of the Investment Company Act of 1940 and Rule 17d-1 thereunder, relating to transactions between International Investment Trust, and investment company affiliate of IOS and The Fund of Funds, Ltd., and certain registered investment companies; and

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(3) Section 17 of the Exchange Act relating to an alleged failure to preserve and produce certain books and records of IOS and ICS required to be maintained, preserved and made available for inspection by registered brokers and dealers under said Act.

Respondents have submitted an Offer of Settlement under which they propose that the proceeding be terminated without any findings as to the foregoing allegations, and for that purpose they stipulate and agree as follows:

- 1. I.O.S., Ltd. (S.A.) ("IOS") is registered with the Conmission as a broker and dealer. Investors Continental Services, Ltd., a wholly-owned subsidiary of IOS, is registered with the Commission as a broker and dealer. 'I.C.S., Ltd., a wholly-ouncd subsidiary of IOS, is registered with the Commission as a broker and dealer. IOS and I.C.S., Ltd. shall each withdraw its registration as a broker and dealer, such withdrawals to be effective upon the entry of the Order by the Commission based on this Stipulation. Investors Continental Services, Ltd. shall comply with the procedures provided in paragraph 2(a) below. Accordingly, 10S and its affiliates, including The Fund . of Funds, Ltd. ("FOF"); International Investment Trust, Ltd. ("IIT") and any investment company affiliated with any of the foregoing which may now or hercafter be organized, their respective affiliates and investment advisers (but only to the extent that the activities of such advisers relate to any of the foregoing persons), shall conduct no activities subject to the jurisdiction of the Commission as hereinafter defined. except as otherwise provided herein.
- entry of the Order based on this Stipulation, either dispose cafter notice to and with the consent of the Commission) of its interest in Investors Continental Services, Ltd. ("ICS") to a person independent of and not directly or indirectly affiliated with IOS or rarge ICS into Investors Planning Corporation of America, with the latter as the survivor corporation ("IPC").
- the Order based on this Stipulation, unless such time is extended in the Commission's discretion, ICS shall sell, transfer or otherwise dispose of its entire interest in IPC to a person who is independent of and not directly or indirectly affiliated with IOS; or within fourteen (14) months after entry of the Order based on this Stipulation by the Commission (unless such time has been extended by the Commission), IOS shall make final arrangements satisfactory to the Commission, in the Commission's sole and absolute discretion, to otherwise remove

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10S from any direct or indirect control over the management and policies of IPC. During such periods, no respondent shall remain or become an employee, officer or director of IPC.

- entry of the Order based on this Stipulation by the Commission, all IOS interest in IPC shall be placed in a voting trust, the terms and independent trustees of which shall be acceptable to the Commission. The trust shall continue until IOS has complied with the provisions of paragraph (b) above.
- (d) IOS shall give the Commission notice of any proposed transaction referred to in paragraph (b) thirty (30) days prior to the effective date thereof, said notice to include a statement of all circumstances of any such transaction, and such transaction shall be effected only upon consent of the ... Commission.
- (e) Upon compliance with paragraph (b), neither. IPC nor any officer, director, stockholder or employee of IPC shall own stock of IOS or its affiliates (except for current holdings by such persons as investors in the IOS Investment Program, IIT or FOF), except as otherwise approved by the Commission and except that present IPC employees who own IOS stock at that time may thereafter continue their employment with IPC for no more than one (1) year if such continued employment is reasonably required by the person not directly or indirectly affiliated with IOS referred to in paragraph (b) above. And has been approved by the Commission pursuant to paragraph (d) above.
- 3. (a) Within five (5) days after entry of the Order based on this Stipulation, The York Fund, Inc., :: The Alger Fund, Inc., The Douglas Fund, Inc. and Computer Directions Fund, Inc. shall each adopt a plan of complete : liquidation and dissolution. Such liquidation shall be effected as to at least 50% of net assets of each such registered company on or before July 15, 1967 and shall be completed on or before October 10, 1967.
- (b) Immediately upon the entry of the Order based on this Stipulation, each of said investment companies, shall cease to effect any transactions in securities except for purposes of effecting the plan of complete liquidation and dissolution provided herein.

- complete liquidation and dissolution described herein, each of said investment companies shall file with the Commission an application pursuant to Section 8(f) of the Investment Company Act of 1940 for an order declaring that each said company has ceased to be an investment company.
- inc. ("FIG") shall effect a liquidation as to all of its net assets except for \$1,000,000 (no more than 25% of which shall consist of marketable securities) on or before July 15, 1967, and shall on or before such date file the application set forth in paragraph (c) above. On or before August 15, 1967 FOF shall have either completely liquidated FIG or have sold (after notice to and with the consent of the Cormission) its entire stock interest in FIG to a person who is independent of and not directly or indirectly affiliated with 10S.
- 4. Upon entry of the Order based on this Stipulation, 10S and all of its affiliates shall cease all sales of securities to United States citizens or nationals wherever located, except for (i) offers and sales outside of the United States (and its territories, possessions or commonwealth subject to the jurisdiction of the United States) to officers, directors and full-time personnel of IOS and its subsidiaries; (ii) sales by IPC; and (iii) sales by Pension Life Insurance Company of America, as provided in paragraph 6.
- 5. (a) Upon entry of the Order based on this ... Stipulation, no IOS officer, director or employee shall engage in any activity subject to the jurisdiction of the Commission.
- (b) While no IOS person, as that term is defined below, has any present intention of terminating his present affiliation with IOS, such person shall not in any event engage in any activity subject to the jurisdiction of the Commission except (i) to the extent necessary to consummate the arrangements referred to in paragraph 2 above, or (ii) upon prior notice to and with the approval of the Commission.
- (c) The term IOS person means any person who is a respondent in this proceeding and who at the date of this Stipulation is an officer or employee of IOS or any of its affiliates.

(a) 10S and its affiliates, including any of their officers, directors, controlling persons or any persons acting directly or indirectly on their behalf, shall not, except upon prior consent of the Commission, acquire, directly or indirectly, any controlling interest in any financial entity doing business in the United States, including but not limited to a broker-dealer, investment company, investment adviser, bank or similar entity, or any other business whose activities directly or indirectly are subject to the jurisdiction of the Commission; provided, however, that any of the aforementioned persons may purchase interests, including woting securities, in any such financial entity if such interests are not, in the aggregate, controlling interests but, as to investment companies, such purchases shall be subject to the provisions of paregraph 7. The aforementioned persons may, however, acquire a controlling interest in any financial entity whose principal business is without the United States and which carries on no business

subject to the jurisdiction of the Commission.

- (b) 10S and affiliates may retain their interests in Pension Life Insurance Company of America ("Tension") provided that Pension conducts a normal and customary insurance business. Such business shall not include the offer or sale of variable annuities or other security interests subject to the jurisdiction of the Commission. It is further agreed that Pension shall not make any public offering of its securities unless such offering is made through a registered broker-dealer who is independent of Pension, 10S or any of their affiliates. The foregoing provision shall not apply when Pension is making an offering of its securities on a pro rata basis to its existing stockholders. 10S may transfer its interests in Pension to IPC.
- 7. (a) 10S will cause FOF, or any other investment company affiliate of 10S, to make only such further purchases of shares of registered investment companies as are within the limitations of Section 12(d)(1) of the Investment Company Act as if applicable.
 - indirectly representation on the board of any registered investment company or investment adviser or underwriter (other than IPC, during the periods set forth in paragraph 2(b)) thereto.

- company affiliate of 10s, to abide by any law passed by Congress in the future which is applicable to foreign investment companies which invest in whole or in part in shares of registered investment companies, whether or not such law is made directly applicable to such foreign investment companies.
- 8. Since IOS will, pursuant to the terms and conditions of this Stipulation, conduct all of its securities activities outside the jurisdiction of the Commission and limit all future sales to foreign nationals only, it agrees as a part of this Stipulation to offer, within a reasonable period of time, to persons who purchased interests in FOF who were either members of the armed forces, other employees of the United States, or residents of the United States, its territories, possessions or commonwealth subject to the jurisdiction of the United States, the opportunity of substituting under terms satisfactory to the Commission, shares of registered investment companies for their interests in FOF or of exercising other options which would terminate any continuing or further ownership of FOF interests.
- basis, information that the Commission may request concerning their operations to show compliance with the terms of this Stipulation.
- for IOS, or any affiliate, or any person, or any IOS person directly or indirectly controlling or controlled by any of the foregoing, to do any act or thing which would be a breach of this Stipulation through or by means of or on behalf of any other person, including any individual, corporation, partnership, association, joint stock company, business trust or unincorporated organization.
- this Stipulation, it appears that any term or condition of the Stipulation has been breached by respondents, the Commission may, upon thirty (30) days notice to respondents, order a hearing be held at a place designated by the Commission to determine only whether a breach of such Stipulation occurred and to afford respondents an opportunity to deny that a breach occurred or to establish mitigating circumstances with respect to such breach. For the purposes of such proceedings, service

may be duly made on respondents by mailing a copy of the notice for hearing to the last known address of 10S. If respondents fail to appear at such hearing, of which they have been duly notified, or upon such hearing if the Commission finds a breach of any term or condition of the Stipulation, the Commission may, without further proceedings, deem respondents to be in default of its Order for Proceedings, deem respondents to be in default of its Order for Proceeding In the Matter of I.O.S., Ltd. (S.A.), et al., of February 3, 1966 and may determine such proceedings against respondents in accordance with the provisions of Rule 7(e) of the Commission's Rules of Practice.

12. Definitions. The terms used in this Stipulation, except as set forth below, are those used in the Securities. Exchange Act of 1934.

"Affiliate" means (i) any company or person directly or indirectly owning, controlling or holding 1% or more of. the securities of 108 or 5% or more of the securities of any subsidiary of IOS; (ii) any company or person, 5% or more of whose securities are directly or indirectly owned, controlled or held by IOS or any of its subsidiaries; (iii) any person directly or indirectly controlling, controlled by or under common control with 103 or any of its subsidiaries; and (iv) any officer or employee of IOS or any of its subsidiaries. For purposes of this Stipulation, the term "affiliate" shall also include an affiliate as defined in Section 2(a)(3) of the Investment Company Act of 1940, of an affiliate of IOS. "Subsidiary" means any company, 10% or more of the outstanding voting securities of which are directly or indirectly owned, controlled or held with power to vote by IOS. Provided, however, that, the companies, other than those nexed in paragraph 3 herein, whose securities were owned by FOF and IIT on April 27, 1967 shall not be deemed affiliates of IOS solely by reason of the relationship with and extent of such ownership on the aforesaid date.

"Investment company affiliate of IOS", for the purpose of paragraph 7(a) above only, shall not include the IOS
Investment Programs for the accumulation of shares of Dreyfus
Fund and the IOS Investment Programs for the accumulation of shares of Research Investing Corporation so long as the shares.

of Dreyfus Fund and Research Investing Corporation held by said

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10S Investment Programs are voted at any regular or special meeting of stockholders for quorum purposes only and are not voted on any matter which may be voted upon at any meeting.

"Jurisdiction of the Commission" shall include, but shall not be limited to, any activity in connection with the conduct of any securities business (which shall include the offer, purchase or sale of a security or the delivery or payment after sale) involving: ...

- (a) any use of the United States mail, including all A.P.O. mail;
- (b) any use of the means or instrumentalities
 of trade, commerce (including the facilities
 of a national securities exchange), transportation
 or communication within or between any state,
 territory, possession or commonwealth of the
 United States;
- (c) any means within the District of Columbia or on any military base, embassy, consular post or ship of the United States; or
- of trade, commerce (including the facilities of a national securities exchange), transportation, or communication between any foreign nation or ship and any state, territory, possession or commonwealth of the United States or the District of Columbia or any military base, embassy, consular post or ship of the United States.
- 13. Respondents waive:
- (1) A hearing pursuant to Section 15(b) of the .. Securities Exchange Act of 1934;
- (2) All post-hearing procedures pursuant to
 Rules 16 and 17 of the Commission's Rules
 of Practice; and
- (3) Judicial review by any court

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After due consideration the Commission has determined that it is in the public interest to accept respondents Offer of Settlement and accordingly

hereby is accepted, the terms and conditions of which shall become effective on June 5, 1967.

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By the Commission.

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By Mollyo A. Thorson
Assistant Socretary

Document 1 of Appendix II to Plaintiff's Memorandu Law in Opposition to Defendants' Motions GUINNESS MAHON REPRESENTATION CO. GUINNESS MAHON &. CO. LTD., LCHDON Dear Hagh. 1.0.S. Underwiter Horn Bull + I had a westing this evering at the Spice of Drocal Keriam Ripley. We discussed the property me with Paul Hiller, prosident, one seems to be a son seen individual. We have arranged for another nation before I leave latte anostine it loss as though Manday 14th afiel might be a suitable dit to start work on the propriets Bown of it is assoftable to you. Please let a dies if this is a difficult time. Alisa circa Martin

Document 2 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

27th March, 1969.

E.M. Cowett, Esq., DRECTORS
XI.O.S. Ltd.,
119 Rue de Lausanne,
Geneva,
Switzerland.

Dear Ed,

I expect you will have heard from Henry Buhl that he and I had two meetings in New York with Drexel Harriman Ripley. So far as I can see these meetings will have prepared the ground quite satisfactorily for Drexel Harriman Ripley to get acquainted with the I.O.S. organisation.

Best regards.

Yours sincerely,

	193A-1			
1	Document 6 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions			
2	Murphy 47			
	Q Any correspondence with Mr. Haft?			
. 3	A I don't recall any.			
4	Q You mentioned you met with Mr. Corett in this			
5	country, is that correct?			
6	A That's correct.			
7	Q On how many occasions?			
8	A I only recall one.			
9	Q Approximately when did that meeting take place?			
10	A May 13th.			
11	Q Where?			
12	A At my office.			
13	Q Who was present?			
14	A I think that Mr. Browning and Mr. Sonne were			
15	there. They were both Drezel people.			
16	Q How long did the meeting last?			
17				
18	A Oh, I would think it might have lasted maybe 20 minutes. I don't know.			
19				
20	and the control of th			
21	arranged by somebody at Drexel.			
22	They said that they would like me to meet Mr. Cowett, I			
23	would be working with him in Geneva.			
24	Q What I'm sorry, anything else?			
25	A No.			
	Q What did you discuss with Mr. Cowett at the			

May 13th meeting?

his thoughts on where the shares would be listed, London,
Amsterdam, Luxenhourg, Canadian exchanges and -- let's see
and I remember he did say that the breakdown of the sales
in different countries, he said he had no objection to
breaking them down among the larger countries. We talked
about that. And he referred to some arrangement they had
come to -- maybe it was a -- I forget the term, but with
the Swiss taxing authorities in regard to the taxes that
were paid by the top people in ISO. This had to do with
the fact that they carned a lot of their income outside of
Geneva and other countries. My recollection is that for
that reason they had some arrangement for allocation of
taxes.

We might have touched on one or two other things. I'm not sure.

Q Did you make a memorandum of your meeting with Mr. Cowett?

A Yes.

Q Did you retain a copy of that memorandum?

A Yes.

MR. SILVERMAN: Mr. Schwartz, I request production of that memorandum.

production of that memorandum

1	Murphy 49		
2	MR. SCHWARTZ: I will take your request		
3	under advisement.		
4	Q Did you have any telephone conversations with		
5	Mr. Cowett?		
6	A Ever?		
7	Q During the course of the ISO offering		
8	A Yes.		
9	Q that emanated from New York.		
10	A I don't recall where they emanated from but		
i1	I am quite sure I did talk with him.		
12	Q Let me change that. Did you from time to time		
13	during the course of the ISO public offering call Mr.		
14	Cowett in Geneva or anywhere else where he might be?		
15	A I think that I had oh, I don't know		
16	maybe two or three such talks with him.		
17	Q These were calls that either you made to him		
18	or he made to you, is that right?		
19	A Yes.		
20	Q And they were calls that you took or made		
21	while in New York, is that right?		
22	A That's right.		
23	Q What was the substance of your conversations		
24	we'll globalize them with Mr. Covett?		
25	A I don't recall.		

9 U U M

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SHEARMAN & STERLING

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FREDRICK M. EATON
MENNY S. GUTHRIE
CLIFFORD M. BOWDEN
DOUGLAS S. STEIMLE
GEORGE S. FIDOT
MENRY MARFIELD
WALTER F. PEASE
ROBERT L. CLARK, JR.
THOMAS A. O'BOYLE
PATRICK J. GROWNEY
C. SECPORD JOHNSON
WILLIAM ROCKEFELLER
THOMAS L. HIGGINSON
MAMILTON MADDEN, JR.
HANS H. ANGERMUELT
HANS H. ANGERMUELT

MAMILTON HADDEN, JR.
HANS H. ANDERMUELLER
JAMES R. ROWEN
THOMAS R. NANGLE
EDWARD HALLAN TUCK
DAVID T. McGOVERN
ARNE HOVDESVEN
R. BRUCE MACWHORTER
PAUL R. WELTCHEK
ARTHUR NORMAN FIELD
PETER P. NITZE
STEPPEN R. VOLK
HENRY S. ZIEGLER

CENTRAL FILES

GRAYSON M-P. HURPHY
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JOHN A. WILSON
HENRY JAMES
GILBERT HERLIN
ERIC N. HAGER
THOMAS P. FENNELLED
OTTO CROUSE
CHARLES GOOGNIN, URL
THOMAS P. FENNELLED
OTTO CROUSE
CHARLES C. PARLIN, IR.
HICHAEL V. FORRESTAL
WILLIAM D. CARROLL
WILLIAM D. CARROLL
HAROLD J. DAW
ROBERT M. FEELY
ROBERT CARROLL
STANLEY I. RUBENFELD
HENRY W. CONNELLY
JOHN E. HOFFMAN, JR.
ARBIER T. HALACKER
JOHN W. WEISER

JOHN W. WEISER

COURSEL

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366, AVENUE LOUISE BRUSSELS 5 (TEL) 49. 61. 66. "NUMLATUS BRUXELS"

20 EXCHANGE PLACE

NEW YORK 10005

BOWLING GREEN 9-8500 CABLE:"NUMLATUS"

May 14, 1969

Mr. Timothy G. Greene Executive Assistant to the Chairman Securities and Exchange Commission 500 North Capitol Street, N.W. Washington D. C.

Dear Mr. Greene:

I am writing this latter pursuant to the suggestion made by you in our telephone conversation late yesterday.

We are acting as counsel for Drexel Harriman Ripley, Incorporated ("DHR") in connection with the proposed public offering outside the United States of approximately \$90,000,000 of common stock of I.O.S. Ltd. (S.A.) ("I.O.S."), of which about half is expected to be newly issued shares and about half a secondary offering.

It is proposed that DHR, the London merchant banking firm of Guinness Mahon & Co. Ltd. and a French bank to be selected will be the three managing underwriters of a syndicate composed mostly of foreign firms that would underwrite about two-thirds of the \$90,000,000 of stock. The remaining one-third would be offered by I.O.S. to certain of its employees and to some of the non-United States holders of shares of mutual funds that . I.O.S. manages.

DHR is to keep the books for the underwriting syndicate and it plans to insist on safeguards that will be designed to preclude distribution or redistribution of the shares sold by the syndicate within, or to nationals of, the United States. Furthermore, the shares are not to be listed on any stock exchange in the United States. If any United States national should nevertheless buy any of the shares from a foreign underwriter, his purchase would be subject to the interest equalization tax. We also

believe that there is a good possibility that the offering can be set up in such a way that if any United States national buys any of the shares from any underwriter (regardless of its nationality) his purchase would be subject to the interest equalization tax.

2

The reason, as I said on the phone, that we wish to meet with Chairman Budge and the other members of the Commission, is the record of controversy and litigation between I.O.S. and the Commission leading up to the Commission's Order of May 23, 1967 accepting the Offer of Settlement of I.O.S.

If DHR is to proceed with the financing it is planned to make a thorough study of I.O.S. and its subsidiaries and to prepare a prospectus which would be consistent with SEC requirements. This will require an unusual amount of time on the part of DHR, our firm as their counsel, and others. To avoid the possibility of uselessly spending months of study and the expenditure of large amounts of money we desire a conference with the Commission to determine whether there is any basic reason why DHR should not act as one of the managing underwriters and to discuss the more important procedures to be used. DHR can then decide whether to proceed or to give up its plans and leave the syndicate to be managed solely by European underwriters.

Because of the foregoing we respectfully request a meeting, formal or informal, with the Commission and any members of the staff that the Chairman may desire to have present. Several representatives of DHR, including one or both of its two senior officers, and I would plan to attend. We would not bring any representative of I.O.S. with us.

We could meet at any time this Friday or Monday or Tuesday that may suit the Commission's convenience. If none of those days is convenient for the Commission we would, of course, arrange to be present at some other time. We regret to intrude on the Commission's busy schedule but owing to the highly unusual background of I.O.S. and the large size of the financing we believe that a meeting with the Commission at this time may save a great deal of time in the future on the part of all concerned, including the Commission and its staff.

I would appreciate it very much if you would phone me collect as soon as you know Chairman Budge's answer to our request.

Very truly yours,

GM-PM: jmc HAND DELIVERY

		ment 11 of Appendix II to Plaintiff's Mainorandum of Law in Opposition to Defendants' Motions			
1		Werblow 7			
2	Q	In 1968, where was your office?			
3	A	30 Looad Street.			
	Q	in 1969?			
5	Α	60 Broad Street.			
6	Q	Do you know when Price Waterhouse was asked to			
7	consult with Drexel in connection with the IOS public				
8	offering?				
0	Α	Yes.			
10	Q	When?			
11	A	In June 1959.			
12	. Q	Do you know who made who extended the invita-			
13	tion or w	tho made the contact?			
14.	A	Yes.			
15	Q	Who?			
.16	A	Mr. Harold Berry of Drexel called Mr. John			
17	Biegler	of Price Waterhouse.			
18	Q	Who is Er. John Biegler?			
19	A	The senior partner of Price Waterhouse.			
20	Q	Did Mr. Biegler tell you of the call?			
21		MR. NOVELLO: I did not hear the			
22	que	stion. I am sorry. Could you repeat it?			
23		(The question was read.)			
24	. A	Yes, he did.			

25

Q

	1	
		- 2
,	met	

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12

14

10

2,1

: 2

::

A Bill Browning.

MR. NOVELLO:

Off the record.

(Discussion off the record.)

- Q What did Mr. Browning tell you?
- A Mr. Browning indicated that they had been studying 8 IOS for some period of time and wanted to continue an investigation in greater depth and wanted us to become part of their investigatory team.
 - Q Did he give you any material at that time?
 - f. He gave me a copy of the 1968 printed annual report of IOS.
 - Q Anything else?
- A Not that I recall.
 - Q Did you have any material with you at that meeting?
- 17 A No.
 - Q Did he subsequently give you additional material?
- A I don't recall.
 - Q Were you subsequently furnished with additional
- ! material by anyone slse?
 - A Yes, I was.
- Q Did you agree at that first meeting to undertake the task of investigating IOS?

	Document 13 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions
1	Werblow 9
2	met?
3	A Bill Browning.
+	MR. NOVELLO: Off the record.
5	(Discussion off the record.)
6	Q What did Mr. Browning tell you?
7	A Mr. Browning indicated that they had been studying
8	10S for some period of time and wanted to continue an in-
9	vestigation in greater depth and wanted us to become part
10	of their investigatory team.
11	Q Did he give you any material at that time?
12	f. He gave me a copy of the 1968 printed annual
13	report of IOS.
14	Q Anything else?
15	A Not that I recall.
16	Q Did you have any material with you at that meeting?
17	A No.
18	Q Did he subsequently give you additional material?
19	A I don't recall.
20	Q Were you subsequently furnished with additional
21	material by anyone slse?
22	A Yes, I was.
23	Q Did you agree at that first meeting to undertake

the task of investigating IOS?

24

25

O Was that later condition one that you specified

to do in an official capacity with the IOS offering.

way be reflected in any public documents as having anything

24

15a

Document 15(a) of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

DREXEL HARRIMAN RIPLEY

NEW YORA
PHILADELPHIA
CHICAGO
BOSTON
BAN FRANCISCO
CLEVELAND
DETROIT
READING

TLANTA

PHILADELPHIA, PENNSYLVANIA IDIOI

TELEPHONE: KI 8-4100

BOARD OF DIRFCTORS

Notice of Meeting

An informal meeting of the Board of Directors of the Corporation has been called by the Chairman of the Executive Committee and will be held at 9:15 A.M. on Monday, June 16, 1969 at the offices of the Corporation, 1500 Walnut Street, Philadelphia, Pennsylvania, and 60 Broad Street, New York, New York, with telephone communications between the two offices.

The purpose of the meeting will be to review and discuss the question of whether the firm should manage the underwriting of the common stock of IOS, Ltd. Attached are two memoranda which have been discussed by the Executive Committee and a ballot which may be submitted at either office or delivered to the undersigned prior to the meeting. Anyone who cannot attend or submit a ballot in time by mail may convey his vote to another director by telephone. The Executive Committee expects to be governed in its decision by the outcome of the balloting.

J. B. Riggs Parker Vice President and Secretary

June 11, 1969

MEMORANDUM

To: The Executive Committee

From: William E. S. Browning

Re: I.O.S., LTD.

We feel that we owe it to I.O.S. this week to advance to some extent, and in some direction, our decision of whether we will manage their proposed first public offering in Europe. The purpose of this memorandum is to bring you up-to-date on the events which have occurred since the Executive Committee meeting on Wednesday, May 14 at where the I.O.S. financing was first discussed.

On Tuesday, May 13 Grayson Murphy of Shearman & Sterling called Hamer Budge, Chairman of the SEC to see if we could meet with the Commission concerning a possible financing for I.O.S.. Judge Budge was in a meeting and his Executive Assistant, Mr. Timothy Greene, advised Mr. Murphy to address such a request to him (Mr. Greene) in writing. A letter from Shearman & Sterling containing this request was delivered to Mr. Greene by hand on Wednesday, May 14. The SEC delayed acting on the request until Tuesday, May 27 when Mr. Greene called Grayson Murphy and said that the Commission had decided not to see us and would send us a letter to that effect. Mr. Greene indicated that the letter would give the reasons why the Commission chose not to see us. The letter was made available to us in Washington ten days later on Friday, June 6. A copy is attached.

Meanwhile, to try and get a better feeling of the climate at the SEC, Mr. Murphy arranged a meeting for Monday, June 9 with Charles E. Shreve, Director of the Division of Corporate Finance (which is in charge of processing registration statements of industrial companies).

The meeting was arranged with the stated purpose of discussing a request for a "no action" letter to the effect that registration would not be required if the proposed offering were effected outside the United States and the securities sold to foreign nationals. Such requests and letters were, until recently, standard practice in Eurodollar issues but the offering procedures have now become sufficiently standardized that the practice of getting a "no action" letter has apparently been discontinued.

In arranging the meeting, Mr. Shreve suggested to Mr. Murphy that we might want to meet with the Division of Corporate Regulation which supervises mutual funds and was in the midst of the previous controversies with

I.O.S. and Fund of Funds. Mr. Murphy suggested that Mr. Shreve invite them to attend but Mr. Shreve declined and said we could see them on our own.

Our meetings with Mr. Shreve and Mr. Solomon Freedman (Director of the Division of Corporate Regulation) and Mr. Alan Mostoff (Associate Director) were held Monday, June 9 and were attended by Grayson Murphy, Bert Coleman and myself. What went on is summarized below.

The meeting with Mr. Shreve started at 9:45 c.m.. Mr. Shreve is, I would say, in his sixties and has perhaps been on the staff of the SEC longer than anyone else. He has a large background of experience and is regarded as being cooperative and of satisfactory competence.

Mr. Shreve had not read the final version of the Commission's

June 6 letter to us and we gave him a copy to read. He remarked that he
understood that the Commission, in writing the letter, had some concern
about their response relative to the anti-fraud provisions of the securities
acts. He said that I.O.S. had had no controversies with his division since
the 1957 consent order which barred them from engaging in the securities
business in the United States. Mr. Murphy then explained the principal
features of the proposed offerings. (In addition to ours, concurrent
offerings of lesser amounts managed by I.O.S.' affiliate Investors Bank and
J. H. Crang & Co. of Toronto are planned.) Mr. Shreve's only question on
Mr. Murphy's oral presentation was whether acquisition of the shares by the
Americans would be subject to the Interest Equalization Tax. We said that
we believed that we could structure the offering so that, in all likelihood, all
such transactions would be subject to the tax and that we hoped to obtain a
ruling from the Internal Revenue Service to this effect.

Grayson Murphy then gave Mr. Shreve a draft of a request for a "no action" letter which we had brought with us for discussion purposes and which Mr. Shreve then read. A copy of this draft is attached. It describes the principal procedures to be followed in the offering to insure its foreign nature and the procedures described are substantially more conservative than those typically followed in European offerings. (For example, Selected Dealers may not sell to other dealers who are not in the Selling Group and the books will be kept in Europe.) Mr. Shreve's only comment on the draft was that he thought we should put in something on the Interest Eq. lization Tax treatment. His only further question was the identity of the selling shareholders and we replied that we understood it would be a broad section of the top management, perhaps 50 to 100 persons.

We then raised the point of the procedure to be followed in submitting the request for a "no action" letter. Mr. Shreve said he did not know whether the Commission would want him to send us a letter; that maybe they felt their June 6 letter to us was all they wanted to come from the Commission. However, Mr. Shreve said that if we submitted our request, he

would confer with his colleagues. He was confident from a Section 5 (the section requiring security registration for public offerings) point of view that there was no problem. However, he said he did not know whether the anti-fraud aspects would affect the Staff's decision on whether or not to issue a "no action" letter.

We then left Mr. Shreve's office and went down to Mr. Solomon Freedman's office to see if we could meet with him. He was able to see us after only a short wait and the meeting started about 10:30 a.m.. It lasted 35 minutes. Mr. Freedman asked his Associate Director, Alan S. Mostoff to join us and about 15 minutes later a Mr. McLain of the Division of Trading came in. (He said nothing during the meeting.) Mr. Freedman appears to be in his sixties and is understood to be near retirement age. Mr. Mostoff appears to be in his low thirties and by reason of his age and position is probably considered a "hot shot". We asked Mr. Freedman if he had read the Commission's June 6 letter to us and he smiled and said "Oh yes". Mr. Murphy then suggested that he might have drafted it and he smiled and said "no comment".

Mr. Murphy, by way of introducing the reason for our meeting, said that we had been in to see Mr. Shreve to discuss obtaining a "no action" letter. Mr. Freedman cut into Mr. Murphy's presentation at that point and wanted to know why we wanted the "no action" letter. He didn't see why we needed one if counsel thought registration was not required and said that the Commission's June 6 letter to us should have been satisfactory on this point. Mr. Murphy pointed out that every request for a "no action" letter is supported by an opinion of counsel and that the Commission's letter said that foreign offerings "as a general rule" did not require registration. He further pointed out that the traditional approach in this area was to set forth the procedures to be followed at some length and request a "no action" letter on the basis of the facts submitted. Mr. Freedman continued his position of disfavoring the issuance of a "no action" letter but did add to his prior points that the Commission did not want to get involved with us in "blessing procedures". He didn't see why the Commission's letter wasn't enough. He indicated they had that in mind when they wrote it.

Mr. Freedman said that the Commission was concerned that the necessary information concerning I.O.S. for a prospectus might not be obtained by us and pointed out that the Commission had had past difficulties in getting information from I.O.S.. He mentioned that that was the lesson of the Bar-Chris case although, he added, "I guess I shouldn't say that".

Since getting information about I.O.S. was then the topic, we turned the conversation to asking Mr. Freedman and Mr. Mostoff what information they could provide concerning I.O.S. in view of their considerable prior involvements with I.O.S.

Alan Mostoff said, 'We know more than you do but we don't want to tell you", but immediately added that that was not what he meant to say. He said that as a general policy the Commission expected underwriters to get information concerning a registrant's relations with the Commission (such as an SEC investigation) from the registrant. He said that the Commission did not want to "bad mouth" I.O.S. so that people would not do business with them. He was generally more friendly than Mr. Freedman and inquired in a friendly manner if Riggs Parter were going to work on the deal. He said that he understood this was a big financing and that we were "big boys" and if we wanted to do business with I.O.S. to go ahead (implying that we would take whatever attendant risks there were). However, he said he felt it was better if he did not talk to us about I.O.S. and said he also thought (implying if we knew what he knew) that we would not want him to talk to us about I.O.S.. The last comment was made after Mr. Freedman had left the room, about five minutes before the end of our meeting, to attend another meeting. On his departure, we thanked him for seeing us and he smiled and shrugged his shoulders.

W.E.S.B.

WESB: dmf Enclosures

May 9, 1969

MEMORANDUM

To: Executive Committee - (For consideration May 14, 1969)

From: W. E. S. Browning and C. R. Sonne

Re: I.O.S., LTD. (S.A.) - First Public Offering of Common Stock, in Europe.

1. Proposed Financing.

We have been asked by I.O.S., LTD. (S.A.), the largest manager and distributor of mutual funds outside the United States, to be the lead managing underwriter of the first public offering of its common stock. The offering will aggregate approximately \$90 million of common stock of which about half will be new money for the account of I.O.S. and the remainder a secondary offering. The proposed use of the proceeds which I.O.S. will receive is presently somewhat indefinite, but I.O.S. is reviewing a number of acquisitions in banking, insurance, travel, tourism and related fields. Approximately one third of the offering will not be underwritten but will be offered by I.O.S. directly to certain employees and to holders of the mutual funds which it manages. The offering will not be registered under the Securities Act of 1933 and the shares will be offered only to foreign nationals outside the United States.

Making various assumptions as to the number of managing underwriters, their participations and gross underwriting discounts, DHR could expect to take in from \$500,000 to \$1,000,000 in underwriting discounts including the management fee and selling concessions. I.O.S. is not planning to talk with any other U.S. investment banking firm, and if we decline, the financing will be managed by European bankers. (In addition, I.O.S. expects to generate \$50 million in brokerage commissions this year of which 40% has not been allocated to particular firms.)

I.O.S.' activities in the early 1960's included sales of unregistered mutual fund shares to Americans in Europe and fund management practices which would be contrary to regulations in this country and also considered overreaching in many cases. For these reasons, the S.E.C. initiated an investigation of I.O.S. in 1965 which, after subsequent legal proceedings, resulted in an order of settlement between I.O.S. and the S.E.C. in May, 1967. The events leading to this settlement and its subsequent interpretation have resulted in continuing extreme animosity by the S.E.C. toward I.O.S., principally at the Staff level, and the s animosity could rub off on an American firm which chose

to aid I 0.S. in raising capital. I.O.S. has also had legal difficulties in several other countries and with varying results. However, these results, even in the aggregate, have not stopped the rapid expansion of I.O.S.' operations.

I.O.S. would like our decision on whether we are prepared to act as their lead managing underwriter on or about Friday, May 16..

2. I.O.S. - A brief summary.

I.O.S. is a very rapidly growing manager of mutual funds which is increasingly expanding into related financial fields, principally real estate, banking and insurance. The following table illustrates the growth of I.O.S. in the past five years:

	1964	1965	1966	1967	1968	
Net Income (in thousands	\$1,823 of dollar		\$5,133	\$7,313	\$15,195	\$30,000 (1969 est.)
Sales (including contractual plan (in millions of	ns)	\$ 610	\$1,066	\$1,135	\$ 1,731	\$ 660 (to 3/31/69)
Fund Assets Managed (in millions		\$ 349	\$ 549	\$ 908	\$ 1,562	\$ 1,862 (5/8/69)
Number of Sale Personnel	es 2,224	4,276	6,370	7,415	9,063	10,000 (5/1/69)*

The consistent increases in results reflected above are likely to continue. The Company's income is derived principally from relatively high percentages of the amount of other people's money (in the form of mutual fund assets) obtained and managed. Therefore, as long as new money (in excess of redemptions) is brought in by the sales force for management, I.O.S.' income will continue to improve even though performance in money management may weaken. The growth in sales and managed assets of I.D.S. and Waddell & Reed in the United States support this conclusion. The recent indicators we have seen point to the fact that sales of I.O.S. funds will continue to increase since the sales force is unusually strong and there is little effective competition. I.O.S. income would be adversely affected if national governments undertook to regulate sales commissions or management fees and significantly reduced those of I.O.S. which are high. There is some discussion in German legislation, expected to be considered in 1970, of deferring some of the front-end load in contractual plans, but no concern in this area was reflected by I.O.S. in their discussions of present and future operations.

^{*} Supported by about 2,500 administrative personnel.

The European commercial and merchant banks have not significantly competed with I.O.S. for the investible funds (individually small but vast in the aggregate) of the middle class. The reason to date has been lack of interest, but future competition by banks would probably be generally limited to their particular countries. Other mutual funds, while providing a competitive investment medium, have not competed effectively with I.O.S. because they lack its large and aggressive door-to-door sales organization with effective back office support. For example, recent U.S. offshore funds have not been sold in Europe with any significant success, while the I.O.S. Venture International Fund has just completed its initial subscription period of one month with \$89 million (including contractual plans). I.O.S. operations are becoming increasingly dependent on arrangements reached with national governments to permit sales of I.O.S. funds in their respective countries. Since opposition in various degrees has been and may in the future be encountered in such countries, it is not impossible that adverse publicity involving dealings of I.O.S. with government officials of a country upon which it is significantly dependent for income would develop. We have not seen any evidence of such a possibility. Over the long term, full scale operations in numerous countries should make I.O.S. less dependent on the results in any one country.

I.O.S. also appears to be becoming more accepted in the European financial community, judging from the firms which have participated in I.O.S. underwriting syndicates or have invited I.O.S. into their syndicates.

3. Principal Activities.

The Company's principal activities at present are mutual fund sales, mutual fund management, real estate sales and management, insurance and banking.

Mutual Fund Sales: I.O.S. presently sells ten of its own funds or equity-linked insurance plans through an organization of over 10,000 full-time salesmen, supervisors and managers. Sales are made through the I.O.S. Investment Program for cash ("Fully Paid Programs") or through Capital Accumulation Programs (with or without program completion insurance), under which investors may invest as little as \$25 a month for ten years. Total sales (including commitments by clients to invest in the future) amounted to \$1,699,000,000 in 1968 and \$657,000,000 in the first quarter of 1969.

The sales force is motivated by commissions (the representatives receive about 62% of the total commissions paid), opportunity to become supervisors and to participate in the I.O.S. employee stock option plan after certain sales levels are achieved, numerous contests and a continuous training program. Top management is aware that the key to the success of I.O.S. is the powerful sales organization it has created. Competition in the field of door-to-door sales has begun only recently in Europe; we understand that the next biggest operation has less than 2,000 salesmen.

Sales are made in various countries throughout the world. In 1968, 67% of total sales were made in Europe, with Germany accounting for 38% and Italy for 10%. The Company has about 500,000 clients.

In the future, I.O.S. anticipates growth in managed assets through 1) more specialized funds such as the recently launched Venture Fund (International) and a planned Real Estate Investment Fund and 2) funds whose primary investment would be in a particular country. Former Congressman and Ambassador James Roosevelt is in charge of organizing new funds in various countries; plans for funds in Sweden, France, Belgium, The Philippines and Spain are well advanced, which should open up large markets in which I.O.S. is presently not represented.

Following are the mutual funds under I.O.S. management as of May 2, 1969: General Funds:

General runds:

Fund of Funds		\$	762,565,874
IIT (International	Investment Tr	rust)	620,889,439

Country-Linked Funds:

Regent (Canada)	72,500,000
Venture Fund (Canada)	25,400,000
Investors Fonds (Germany)	17,867,206
Fonditalia (Italy)	95,100,000
Equity Units (Dover Plan - U.K.)	121,208,121
Fund of Funds Sterling (Sterling Area)	39,661,544
IVM Invest (Netherlands)	431,610
New Fund - First Month of Sales	
Venture Fund International	89,795,880 (May 5)
Equity Units (Dover Plan - U.K.) Fund of Funds Sterling (Sterling Area) IVM Invest (Netherlands) New Fund - First Month of Sales	39,661,544 431,610

\$1,845,419,674

The management functions are performed by various subsidiaries, one of which, I.O.S. Management Limited (which, through subsidiaries, manages Fund of Funds, I.I.T., Regent and Fonditalia) is 20%-owned by the public. The Company's policy of fund management is to make arrangements with independent advisers to manage portions of the portfolio. Their performances are watched, new funds are allocated to those who perform best, and, when appropriate and permissible, advisers are changed.

Real Estate Sales and Management: I.O.S.' real estate subsidiary, Indevco acts as a promotor and distributor of real estate projects, and as portfolio advisor to a real estate fund which is a sub-account of Fund of Funds. Formed in 1966, Indevco's first project is a \$15 million condominium apartment complex in Torremolinos, Spain, consisting of 21 fifteen story buildings. Due to strong cash sales and slow construction, this project is self-financing. Construction work on a \$30 million,

4-building condominium complex in Hallandale, Florida, consisting of 1,295 units, has recently begun and 950 of the units are already sold. Some mortgage financing is expected to be required for this project. Indevco acts as sales agent and manager of the properties; the Real Estate Growth Fund is the original owner of 1/3 of the Spanish project and 100% of the Florida project.

A number of other projects are in the planning stages, including senior citizens' complexes in Hamburg and Munich and joint ventures in hotel building with Hyatt International.

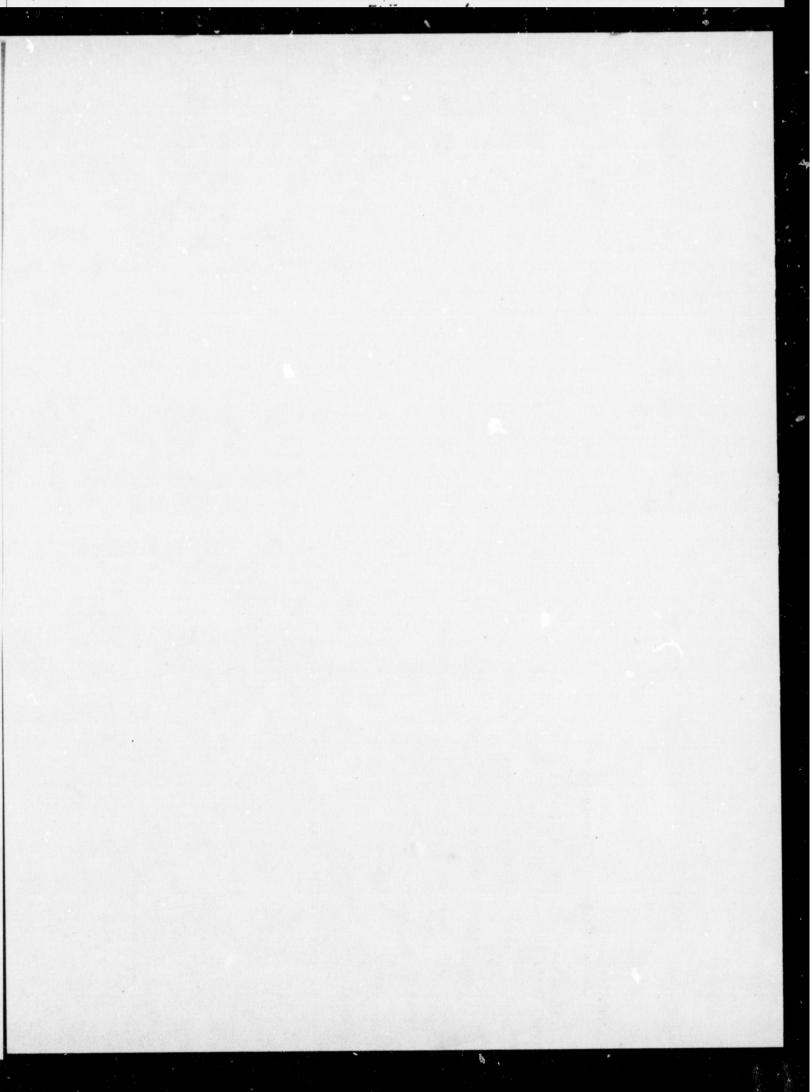
Insurance: The principal insurance holdings of I.O.S. are a 78%-owned Luxembourg company (ILI/Lux) which offers program-completion insurance and had \$429,199,000 insurance in force on December 31, 1968 and a U.K. subsidiary, with \$531,435,000 insurance in force at December 31, 1968, principally consisting of an equity-linked term life policy called The Dover Plan. The Dover Plan is essentially a mutual fund in insurance clothing.

Commercial and Investment Banking: I.O.S.' most significant bank holding is Overseas Development Bank, a Swiss bank in Geneva with branches in Luxembourg and London, capital of \$32 million and total assets of \$306 million on March 31, 1969. In addition, I.O.S. owns 90% of Orbis Bank in Munich, Germany, which was set up to conform to German law requiring mutual fund sales to be made through banks. Other smaller banks are commencing operations in the Bahamas, and I.O.S. expects to acquire banks in various countries, especially where this will facilitate mutual fund sales. Underwriting activities are carried on through Investor's Bank Luxembourg.

Administrative Support: Administrative support for all operations (except for the insurance group which operates from Wembley, England) is carried on in five facilities in the greater Geneva area. About 1,500 people are supported by an IBM 360/40 computer. About sixty people are engaged in computer systems planning and programming.

Financial Position and Sources of Income: I.O.S. has a strong financial position with no debt and \$45 million of equity at December 31, 1968. I.O.S. had roughly \$20 million in cash on May 1, 1969.

The table on the following page shows the sources of income:



	1968 (\$000)	% of Net	1967 (\$000)	% of Net	1966 o (\$000)	% f Net	1965 (\$000)	% of Net	1964 (\$000)	of Net	
Commissions (Net of Salesmen's Commissions)	22,849		14,525		12,863		8,723		4,427		
Management Advisory and Service Fees, Interest, etc.	16,392		11,379		4,306		2,396		1,087		
Total Mutual Fund Income	39,241		25,904		17,169		11,119		5,514		
Expenses & Taxes	30,472		22,819		12,860		7,578		3,577		
Net Mutual Fund Income	8,769	57.7	3,085	42.2	4,309	83.9	3,541	104.7	1,937	106.3	
Real Estate - Net Income	1,734	11.4	1,386	19.0	(191)	(3.7)					20
Insurance - Net Income	1,002	6.6	375	5.1	353	6.9	137	4.1	54	3.0	190
Banking - Net Income	1,327	8.7	329	4.5	406	7.9	36	. 1.1	33	1.7	
Former Investors Overseas Bank(1)	2,081	13.7	1,357	18.6	440	8.6	1		(201)	(11.0)	
I.P.C. (now sold)	282	1.9	781	10.6	(200)	(3.9)	(339)	(10.1)			
Other					16	.3	5	.1		•	
		-							1 02	100.0	
NET INCOME	15,195	100.0	7,313	100.0	5,133	100.0	3,381	100.0	1,82	100.0	

¹⁾ In liquidation, to be phased out in 1969.

4. I.O.S. and the S.E.C.

The continuing ill will of the S.E.C. Staff towards I.O.S. could affect the relationship between the Staff and DHR. For example, the offering considered might subsequently be investigated in great detail with a view to discovering U.S. purchasers. The record in the S.E.C. - I.O.S. matter would not preclude the Staff from attempting to plant U.S. orders through European banks.

The Staff's opinion of I.O.S. concerned not only the substantive conduct of fund management but, in the intion, the methods of resistance to S.E.C. demands. In the most publicized incident I.O.S. apparently destroyed a letter in its files which had been marked by an S.E.C. investigator for I.O.S. to copy and send to the S.E.C. The letter cautioned against putting incriminating letters in files subject to investigation and closed: "I can ask no more than that each person involved do his part in cutting down the extent of our obvious violations."

Substantively the S.E.C. was concerned not only about fund shares being sold to Americans in Europe without Securities Act registration but also over a number of management practices considered illegal or overreaching by U.S. standards. Some of these are discussed briefly below.

- A. The Fund of Funds ("FOF") prospectus compared the fund's performance with various U.S. stock averages without disclosing that the comparison assumed reinvestment of dividends for FOF but not for the stock averages.
- B. A number of the I.O.S. funds pay an annual management fee of 1% which would be unacceptable in the United States. The fee is disclosed.
- C. FOF pays I.O.S. 75% of the acquisition charge for distributing FOF and a management fee of ½% but I.O.S. gets the following typical additional compensations:
 - (i) I.O.S. invests FOF in sub-funds owned and managed by I.O.S. I.O.S. gets a brokerage commission of 1% for placing these investments. (I.O.S. is considering ending this practice.)
 - (ii) For "managing" the sub-funds I.O.S. gets a management fee of 10% of appreciation. This fee is split with independent managers hired by I.O.S. to actually manage the sub-funds.
 - (iii) I.O.S. arranges loans of securities for FOF for a slight fee.
 - (iv) Only dollars are invested in FOF. When investors send in other currencies, which represent only a small portion of total investments, I.O.S. purchases dollars for them and retains a standard profit on currency exchange.

- (v) FOF features a contractual plan under which life insurance completes the program if the investor dies. I.O.S. underwrites the insurance at an attractive premium.
- D. Since voting and other corporate controls of funds are in the hands of I.O.S., the fund management fees can be revised by I.O.S. at any time without vote or approval of fund shareholders.

The offering contemplated is of I.O.S. common stock, not shares of the funds, and may, therefore, be viewed as letting the public share in the benefits of the practices described. However, the possibility of adverse publicity to I.O.S. resulting from fund magement practices should be considered in the light of any effect may have on DHR as I.O.S.' investment banker.

5. Conclusion.

The proposed transaction is a rarity in that the pluses are so plus and the minuses are so minus. In summary, the pluses are the financial strength of I.O.S. and the financial benefits to DHR. The minuses are the risks of engaging in a significant publicized transaction with persons whose reputation warns that they are more likely than others to engage in conduct which could adversely affect DHR in name or financially.

On balance, the undersigned favor proceeding with the financing if we are satisfactorily convinced, after discussion with the S.E.C., that so doing will not result in adverse action being taken against us.

The attached booklet, prepared by I.O.S. describes the Company in greater detail. A more informal view may be obtained from the attached article by Martin Mayer.

W.E.S.B. C.R.S.

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Document 15(b) of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

Coleman

	Q	Then	was	final	actio	n taken	on	the	report	that
wa	s made	by Mr	. So:	ne and	Mr.	Brownin	g?			

A There was a meeting—an informal meeting of the board of directors which was held both in New York and Philadelphia connected by a squawk box, at which it was decided to continue further and I was authorized to go to—I don't know that I was specifically personally authorized, but it was decided to form a group to go to Geneva and subject to being able to work out satisfactory terms for the offering, after our arrival in Geneva, that we were authorized to proceed with it.

Q The two meetings of the executive committee that you referred to, those took place in either New York or Philadelphia; is that correct?

A Yes.

Q And during those meetings the executive committee discussed the investigation report made by Mr. Sonne and Mr. Browning; is that correct?

A That's correct.

Q Did Mr. Sonne and Mr. Browning's report contain a recommendation?

A Yes, it did.

Q What was that recommendation?

A On balance to go forward, subject again to being

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2	able to work out satisfactory details and work outand
3	this meant getting certain information from Andersen, the
4	accountants, finding out how much information they could
5	provide, subject to checking with the SEC, subject to
6	checking further with Shearman & Sterling.
7	At one of the executive committee meetings, the
8	second one, I believe Grace and Murphy of Shearman &
9	Sterling was also present.
10	Q Who invited Mr. Grace and Murphy?

- It would have been either Berry or myself.
- Did Mr. Murphy render a report?
- Yes, before--

MR. SCHWARTZ: Don't give the substance of the report.

A Mr. Murphy rendered a report.

MR. SILVERMAN: Why don't we take a brief recess.

(A short recess was taken.)

BY MR. SILVERMAN:

What was your reason for inviting Mr. Murphy to the meeting, Mr. Grace and Mr. Murphy to the meeting?

Mr. Murphy and I and I think Mr. Browning had been down to the SEC and had discussed this proposed or possible IOS offering with the SEC and I think we felt it

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1	208 A-3 Coleman 30	
2	would be appropriate to hear Mr. Murphy's opinion as to	-
3	or his report as to that meeting.	
4	Q Did you visit with the SEC prior to receiving	-
5	the report from Mr. Sonne and Mr. Browning?	
6	A No.	
7	Q So then the chronology is first you received the	
8	report from Mr. Sonne and Mr. Browning and then there was	
9	an executive committee meeting and then you went to	
10	Washington?	
11	A That's my recollection and that was followed by	
12	the second executive committee meeting at which Murphy	
13	was present.	
14	Q Was it decided at the first executive committee	
15	meeting that you would go to Washington?	
16	A I don't think so, but I don't honestly remember	•
17	Q Who decided that a visit should be paid to the	
18	SEC in Washington?	
19	A I think Berry and I made that decision after	
20	discussion with Grace and Murphy.	

- Who suggested it, do you know?
- A I don't remember.
- And you, in fact, did go to Washington; is that Q correct?
 - We did. A

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Q With Mr. Murphy?

A With Mr. Murphy.

Q And at this second executive committee meeting,
Mr. Murphy reported on the substance of that visit in
Washington; is that correct?

A Mr. Murphy reported on it and I believe I reported on it.

Q What did you say on it?

A Just what had taken place.

Q What had taken place?

THE WITNESS: Okay?

MR. SCHWARTZ: Yes.

A We talked to Mr. Shreve and to Mr. Freedman and a Mr. Mastoff and we told them that we were considering the possibility of an offering outside of the United States for IOS, Limited. We asked if we could get a no-action letter.

When I say "we," I'm talking about Drexel and Shearman & Sterling. We asked them if they could enlighten us to any degree about IOS.

I think that was the substance of the meeting.

Q Did the SEC enlighten you as to IOS?

A They did not. They said they would not do that.

They said that they didn't want to disclose any information



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Document 16 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

July 7, 1969

NEMORÁNIUM

To:

Mr. H. J. Berry

Mr. 3. D. Coleman

Mr. P. T. Miller, Jr.

Mr. E. J. Morehouse

Mr. C. C. Ambrose

Mr. E. M. Cheston, Jr.

Mr. C. R. Sonne

Mr. P. D. Heerwagen

From: William E. S. Browning

Re: I.O.S.

Attached is the latest information we have received concerning the proposed law suit by the SEC against I.O.S. relating to alleged illegal sales of unregistered shares of Revenue Properties Co., Ltd.

W.E.S.B.

WESB: dmf

ATTORNETS AT LAW

140 EAST 80" STREET . NEW YORK, N.Y. 10021

2; 628-5250

BA REALD

CAULE: LAWSTAFT-MENTON.

July 2, 1939

Thomas Joyce, Esq. . Shearman & Sterling, Esgs. 20 Exchange Place New York, New York

Re: FI.O.S. - Revenue Properties Co., Ltd.

Dear Mr. Joyce:

This letter is a follow-up to my letter of June 17, 1969, on the above subject.

The staff appears to be prepared to recommend an injunctive action in the above matter. Since all the facts developed in the matter show that I.O.S. and its officers acted without -intent or knowledge and that, even assuming arguendo some form of knowledge, that, as a matter of law, no violation of Section 5 as to I.O.S. was involved, we propose, in the event the staff does go to the Commission with their recommendation, to request an informal hearing before the Commission. Accordingly, we have drafted, and enclose a copy herewith, of our proposed request for an informal hearing.

Mr. Cornfeld and I will meet with the staff tomorrow on this subject. In the event, as seems likely, that the staff cannot be dissauded from making the recommendation to the Commission, we will hand-deliver the enclosed request on Monday. In any event, the enclosure pretty well brings you up to date on the facts involved in the matter, and our dealings with the staff with regard thereto.

We trust that you will appropriately advise your client, Drexel Harriman Ripley.

Very truly yours,

Robert Antagy

ATTORNEYS AT LAW

MO EAST SOM STREET . NEW YORK, N.Y. 10021

July 7, 1969

Hon. Hamer Budge, Chairman Securities and Exchange Commission 500 North Capitol Street Washington, D. C.

Dear Mr. Chairman:

As counsel for I.O.S., Ltd. (S.A.), IIT, Fonditalia, related management companies, Bernard Cornfeld, C. Henry Buhl III, Joe Melse and Melvin Rosen (the "IOS Group"), we hereby respectfully request an informal hearing before the Commission.

Although the specific impetus for the filing of this request is a threatened injunctive action against the IOS Group under Section 5 of the Securities Act of 1933, the undersigned believes that the informal hearing is equally important for the purpose of disposing of questions as to the application and interpretation of the Settlement Order entered by the Commission on May 23, 1967 . (the "Order"). Since the entry of the Order, a number of still unresolved questions have arisen in dealings with the Staff; it is in the interest of all concerned that such questions be definitively disposed of at the earliest moment.

THREATENED INJUNCTIVE ACTION

- In early May of 1969, staff members of the Division of Trading and Markets telephoned the undersigned and requested that Joe Melse be produced as soon as possible for formal testimony before the Staff in connection with transactions in shares of Revenue Properties Company, Limited ("Revenue"). This was the first notice TOS had of the then pending investigation of Revenue.
- Melse testified on May 6 and, as requested, brought relevant documents along with him. In order to meet the Staff's request that he testify "immediately", Melse had to cancel a number of important engagements in Europe, spend time reviewing his files for appropriate documents

and fly to the United States over the weekend. He was produced by 103 voluntarily and without any order then having been entered.

C. The substance of Melse's testimony was as follows:

He is a Dutch national, residing in Geneva, Switzerland.

He has had no substantial connection with either the
management of investments in United States securities
or the operation of United States securities markets.

As a consequence, he has little or no acquaintance
with federal securities laws. He never anticipated
with federal securities would require any such acquaintance.

He is a senior portfolio manager for IOS, having direct charge of all portfolio investments by IOS-affiliated funds in non-United States securities. He is responsible funds in non-United States securities. He is responsible for the management of more than \$300 million invested for the management of more than \$300 million invested on a continuing basis in Canadian, European and Japanese on a continuing basis in Canadian, European and Japanese securities. The decisions to buy and sell shares of securities. The decisions to buy and Fonditalia were Revenue for the portfolios of IIT and Fonditalia were solely his.

He had first purchased shares of Revenue for fund portfolios in June of 1968. In October of 1968, he portfolios in June of 1968. In October of 1968, he decided upon the purchase of 100,000 shares of Revenue, subject to a "Canadian investment letter", and regarded subject to a "Canadian investment letter", subject such 100,000 shares as "Canadian letter stock", subject to resale restrictions normally applicable in Canada to such category of stock.

The 100,000 shares of "Canadian letter stock" have not been sold, but are still held in the portfolio of IIT.

However, subsequent to the purchase of the 100,000 shares, there have been a series of both purchases and sales of Revenue stock for the portfolios of both IIT and Fonditalia. Revenue stock for the portfolios of both IIT and Fonditalia. All of such purchases and all of such sales, except for all of such purchases and all of such sales, were made sales involving an aggregate of 40,000 shares, were made in the Canadian securities markets and through non-in the Canadian broker-dealers.

Certain of the purchases of Revenue shares were "arranged" by Norman Cooper, known to Melse to be the brother-in-law of the president of Revenue. However, except for the 100,000 shares of "Canadian letter stock", Cooper assured Melse that stock purchased in block sales "arranged" by Melse that stock purchased in block sales "arranged" by Cooper were "free" of all restrictions on resale. Melse accepted Cooper's representations as to the "free" status of the Revenue shares and made no further inquiry.

As to the 40,000 shares of Revenue stock not sold into the Canadian markets, Melse gave orders for the sale of such steek into the United States securities markets after it was stated to him on the telephone, without his having requested such information, by Arthur Lipper Corporation ("Lipper"), New York; that it was possible (due to a temporary market arbitrage as between New York and Toronto) to dispose of blocks of Revenue stock on the American Stock Exchange at a slightly higher sale price. Melse belleves, but is not sure, that the Lipper statement came from Peter Toczek, Lipper's trader.

At the time of the Lipper statement Melse was in the process of selling Revenue shares in the Canadian market. Without being aware of any United States securities law problems that might arise as a result of his actions, Melse thereupon gave orders to sell 40,000 shares of Revenue stock on the American Stock Exchange.

- D. Prior to the date Melse testified, the Staff had information which tended to show that only 15,000 shares of Revenue stock had been distributed in the United States by IOS-affiliated entities. As a result of Melse's testimony and the documents produced, the Staff stated that an aggregate of:40,000 shares were so distributed. As of the undersigned's meeting with the Staff on Friday, June 27, the Staff stated that the number of shares was still 40,000 which could be "traced" but that some of the shares which were sold in Canada "might" have found their way into the United States.
- Week of June 9, 1969, the Staff requested that IOS produce Melvin Rosen, Bernard Cornfeld and C. Henry Buhl III for formal testimony. After the undersigned had consulted with Cornfeld, who then was in Geneva and was not planning to come to the United States until the fall, the undersigned stated to the Staff that Mr. Cornfeld had no knowledge whatsoever of any transactions in Revenue shares by any person or entity. The undersigned thereupon offered the Staff an unqualified affidavit by Cornfeld to such effect. Thereafter, the Staff did not pursue the request that Cornfeld appear to testify.
- F. As to the requested appearance of Buhl to testify, the undersigned advised the Staff that Buhl was then on his way from Geneva to Australia, but that Buhl could be produced for testimony during the week of June 23. The voluntary appearance of Buhl for testimony on June 27 was thereupon scheduled.

mater appraised voluntarily on June 20 for formal restimony.

H. The subsecte of Mr. Rosen's testimony was as follows:

He is an American citizen, residing in Geneva, Switzerland. He was hired by IOS in the late summer of 1968 to act as Mr, Buhl's deputy and to be in charge of administrative functionings of the investment management departments of IOS and its affiliates. His duties included acting as "compliance officer" with respect to the Order and related matters arising under federal securities laws.

The portfolio management for all IOS-affiliated funds is clearly separated into United States and non-United States securities segments. Rosen continuously supervised and monitored all recommendations regarding the purchase and sale of United States securities, with a view, purchase and sale of United States securities, with a view, among other things, to preventing potential violations of the Order. Perhaps mistakenly, purchases and sales of non-United States securities portfolios have not been subject to such continuous and stringent controls by him.

Me had no knowledge of who the actual sellers were of Revenue shares to IOS-affiliated funds. He knew that Revenue was a Canadian company and that its shares were very actively traded on the Toronto Stock Exchange, which he believed to be the principal market for which he believed to be the principal market for hurchases and sales of Revenue shares. In addition, he purchases and sales of Revenue shares. In addition, he thought it inconceivable that any sales of Revenue shares thought it inconceivable that any sales of Revenue shares might take place other than in the Canadian markets, because under the rules of the Toronto Stock Exchange because under the rules of the Toronto Stock Exchange the selling funds receive full benefit of volume discounts, and IOS-affiliated banks participate in commission-sharing benefits.

Rosen was not in Geneva at the time Melse had his conversation with Lipper. Rosen was in Nice, France, on a short vacation. Up to shortly after his return from vacation, having no conception of the fact that Melse wastion, having no conception of the fact that Melse might sell Revenue or any other shares in New York, Rosen had not established any procedures to control Rosen had not established any procedures to control purchases or sales by Melse of foreign securities into the United States securities markets.

Rosen further testified that he might have been "negligent" or "neglectful" in not establishing procedures or conceiving of the possibility that such procedures might

T. ..

be necessary, and did not "focus" on this problem even after his return from vacation.

- I. Upon the conclusion of Rosen's testimony, the Staff stated that there was no need for Buhl to testify, and that the Staff had firmly resolved to bring an injunctive action against IOS. The scheduled June 27 injunctive action against IOS. The scheduled June 27 meeting was then to be devoted to exploration of the possible disposition of the proposed injunctive action.
- J. The undersigned was advised by the Staff on June 27 that an aggregate of nearly one million shares of Revenue stock was involved in the alleged distribution of unregistered stock in the United States. Of this aggregate, unregistered stock in the United States were traceable to the Staff alleged that 40,000 shares were traceable to transactions by IOS-affiliated funds.
- K. The undersigned has subsequently ascertained (and advised the Staff) that: (i) during the period from June of 1968 (when IOS-affiliated funds first invested in Revenue shares) through January of 1969 (when Revenue shares were admitted to listing on the American Stock Exchange), the admitted to listing in Revenue shares in the over-the-counter volume of trading in Revenue shares in the over-the-counter volume of trading in the United States was relatively small, and (ii) markets in the United States was relatively small, and since the listing of Revenue shares, the volume of trading on the American Stock Exchange, especially in the "foreign" on the American Stock Exchange, especially in the volume of shares, has been relatively small compared to the volume of trading on the Toronto Stock Exchange.
 - L. Further, the undersigned has ascertained that the volume of trading in Revenue shares on the Toronto Stock of trading in Revenue shares on the Toronto Stock Exchange was particularly active in April of 1969, when the sales of the 40,000 Revenue shares were made by IOS-affiliated sales of the United States. In fact, Revenue stock was funds in the United States. In fact, Revenue stock was either the most actively traded or the second most actively either the most actively traded or the second most actively traded industrial stock on the Toronto Stock Exchange on the relevant days in April.
 - Mi This is very reverse of the usual situation in which Canadian stock "dribbles" into the United States by Virtue of a limited Canadian and active American market. Virtue of a limited Canadian and active American market. In view of such circumstances, it could not have been reasonably. In view of such circumstances, it could not have been reasonably. Anticipated by the responsible officers of IOS and its anticipated by the responsible officers of Revenue stock affiliates that the sale of 40,000 shares in violation of section 5 would be made in the United States in violation of section 5 would be made in the United States in violation of 40,000 shares into of the Securities Act of 1933. The sale of 40,000 shares into of the United States occurred only through a mere coincidence the United States occurred only through a mere coincidence of unlikely circumstances -- namely, that (i) the Senior of unlikely circumstances -- namely, that (i) the Senior "compliance officer" (Rosen) was away on vacation, and (ii) the

sales were ordered by a foreign national portfolio manager (Malse), rotally unknowledgeable as to federal securities matters, as a result of an unsolicited statement from Lipper that the shares (then in the process of being sold on the Toronto Stock Exchange) could better be sold into the United States markets. Further, Melse (as well as every other person associated with IOS and its affiliates) had no reason to know that any of the Revenue shares being sold had come from insiders and were not "free" for sale. (Note: The 100,000 shares of "Canadian letter stock" acquired by IIT remains to this date unsold and in the IIT portfolio.)

- This happenstance exposed a previously unrecognized " X. "gap" in the system of controls introduced by IOS to ensure compliance with the Order and federal securities laws. This "gap" has now been "plugged" so as to prevent in the future any inadvertent and unknowing conduit role in the distribution of unregistered securities into the United States. The "gap" was a very small one through which only a small number of securities could have filtered. Specifically, the "gap" was a failure to recognize the need to instruct a. foreign national portfolio manager dealing with exclusively non-United States securities (i) to inquire prior to purchasing foreign securities in a foreign market (where the principal sales market was also foreign and where sales historically by such manager were exclusively on the foreign markets) as to the actual soller of the securities so as to escertain that the seller is not an insider of the company, . and (ii) prior to selling a portion of such securities into · the United States markets, to fully establish that such sales will be in compliance with the federal securities laws and the then current doctrines of "fungibility" of the Staff.
 - O. The control that has been instituted to cover this is an absolute one: No sales can be nade by any IOS-affiliated fund into the United States markets unless and until a compliance officer of IOS has specifically considered the legality of such sale from the standpoint of compliance with the Order and applicable securities laws. This, of course, has been done previously as to transactions for the United States portfolios of all IOS-affiliated funds prior to and subsequent to the sales of Revenue shares in April of 1965. After recognizing the "gap", the same procedure has been instituted in situation where dual markets exist, i.e. where there are foreign and United States markets in a particular entity.

aw in Opposition to Detendants' Motions

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P. Although the Staff apparently was prepared to commence in action against the IOS Group solely on the basis of the 15,000 shares which they knew of prior to Mulse's testimony, and the apparently propared to recommend action, to the Commission with respect to the 40,000 shares, we respectfully request that, prior to a Commission decision on the Staff's apparent recommendation, the IOS Group be heard on the subject. We can understand a Staff recommendation that immediate action be taken to obtain injunctive relief in a situation where there had been a past history of widespread distribution of large amounts of securities in the United States without registration and where the distributors had acted knowingly (and in usual cases pursuant to a plan or conspiracy to distribute).

need for the action to be instituted forthwith because both elements are lacking. Further, we feel by reason of the unprecedented nature of this matter that the Commission should have time for full consideration of the facts and issues. The extensive publicity which the mere institution of such an action would engender should give sufficient reason for careful consideration of the Staff's anticipated recommendation. Indeed, it was only by reason of the lack of full diligence on the part of the press that extensive publicity did not attach to IOS at the time of the filing of the complaint by the Staff against Revenue, its officers and others on or before May 3, 1969. In paragraph 25 of that complaint, filed in the United States District Court for the Southern District of New York, the Staff alleged as follows:

"A substantial number of the Common Shares described in paragraphs 21 and 22 above were purchased by entities affiliated with IOS Ltd. and thereafter certain of said shares were distributed in transactions effected on the American Stock Exchange."

Sometime after this date, the Staff made clear that it was their firm intention to recommend to the Commission commencement of a separate action against the IOS Group.

R. So that the Staff and the Commission need not feel that such delay in the institution of an action as may be occasioned by the granting of this request for an informal hearing will in any way prejudice the Commission's informal hearing will in any way prejudice the Commission's interest or cause irreparable damage, the TOS Group hereby represents to the Commission that, until this matter has been disposed of by the Commission, no TOS-affiliated entity will pure disposed of by the Commission, no TOS-affiliated entity will pure sell any shares of Revenue stock, without the prior assent and

concurrence of the Scall. (The proviso in the last sentence is intended solely to meet the possible situation where, furing the pendency of this matter before the Commission, an IOS-affiliated entity proposed to sell Revenue stock an IOS-affiliated entity proposed to sell Revenue stock under circumstances that make it clear to such entity and under circumstances that make it clear to such entity and to the Staff that no possible violation of Section 5 would to the Staff that no possible violation of course, be be involved. Such an exception would, of course, be applicable even in the event an injunction had previously been entered.)

NEED FOR INTERPRETATION OF THE ORDER

The undersigned and members of the Staff have spent an inordinate amount of time and effort subsequent to the entry of the Order in May of 1967 in seeking to resolve a myriad of questions of interpretation which have arisen under the language of the Order. After an extended series of meetings on the subject, the undersigned prepared and submitted to the Staff a letter dated March 5, 1969, proposing to compromise some of those questions. Such letter was a redraft of a prior letter. The letter of March 5 was submitted with a reasonable expectation that the proposals would be accepted, with minor or no modifications, within a reasonably short period of time. This has not occurred. The fact that these and other questions remain unresolved to date has significantly and adversely affected the operations of IOS and affiliates, not only from the March 5 date, but from a period of time considerably prior thereto when the questions were first raised. The impetus behind the proposal and the Staff's seeming tentative acceptance thereof was on both sides, we presume, a strong desire to put to rest the "difficulties" between IOS and affiliates and the Commission.

In the sincere hope that we can through the medium of an informal hearing before the Commission definitively put to rest most, if not all, of these difficulties, we respectfully rest most, if not all, of these difficulties, we respectfully request that the informal hearing cover not only the narrow confines of the Revenue matter, but also those matters which confines of the Revenue matter, but also those matters which loss and the Staff feel are causing concern to either or both.

We do feel that moving the situs for the resolution of outstanding issues from the Commission and its Staff to the Counthouse would, at this time, serve only to exacerbate the "difficulties". A carefully prepared and reasoned "give-and take" informal hearing before the Commission would, we believe, take" informal hearing before the Commission would, we believe take to amelicrate, and perhaps dispose of, all outstanding serve to amelicially to IOS and the Commission. We believe that issues beneficially to IOS and the Commission. We believe that escalation of these difficulties would only foreclose processalation of these difficulties would only foreclose processalation and mutually beneficial solutions.

Accordingly, we respectfully request an informal hearing at a time convenient to the Commission and request that there a time convenient to appear on behalf of IOS the undersigned, he permitted to appear on behalf of IOS the undersigned, wilson W. Wyatt, Esq., and Edward M. Cowett, Esq.

We are enclosing 15 copies of this request so that you may circulate it among the other members of the Commission and interested members of the Staff.

· Very truly yours,

Robert J. Haft

RIN: jg Enclosures 208 A-16

Document 17(a) of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

STAMER & HAFT

ATTORNEYS AT LAW

140 EAST BOM STREET . NEW YORK, N.Y. 10021

(212) 628-5200

CABLE: LAWSTAFT NEWYORK

June 17, 1969

Thomas Joyce, Esq. Shearman & Sterling, Esq. 20 Exchange Place New York, New York

Dear Mr. Joyce:

Re: I.O.S. - Revenue Properties Co., Ltd.

At the request of Bill Browning at Drexel Harriman Ripley, we are furnishing this letter to you with respect to the above matter. We have sent an extra copy along so that you can furnish it to Mr. Browning with your own comments. Of course, this letter is submitted to you and to your client on a confidential basis in connection ith your client's role as proposed managing underwriter of I.O.S. securities.

I.O.S. first learned of a pending investigation into Revenue Properties Co., Ltd. ("Revenue") in early May when Stanley Sporkin and Larry Williams of the S.E.C.'s Division of Trading and Markets, Washington, called and requested that Joe Melse, the portfolio manager of IIT's foreign portfolio, come to testify. Mr. Melse testified on May 6; the undersigned represented him as counsel during the formal testimony. The staff at that time pointed out that they had information which tended to show that Revenue stock had been distributed in the United States without registration and in violation of Section 5 of the 1933 Act. Melse purchased for various I.O.S. funds, including IIT, shares of Revenue through Canadian brokers who, in turn, purchased the shares from other Canadian brokers, and in addition, purchased 100,000 shares of Revenue as "Canadian letter stock" at a discount. The "Canadian letter stock" was purchased after a Mr. Norton Cooper contacted Melse and stated that he would be able to arrange to have Melse buy the shares at a discount. Cooper is the brother-in-law of the president of Revenue, which Melse knew at the time. Melse sold into the United States

STAMER & HAFT

Thomas Joyce, Esq.

-2-

June 17, 1969

markets approximately 100,000 shares of Revenue stock which Melse insisted was out of the more than 100,000 shares of "free" Revenue stock. It is Melse's position that the 100,000 shares still retained by the funds is the "Canadian letter stock".

The staff of the S.E.C. at that time took the position that Melse should have done due diligence to make sure that what he considered the "free" stock was purchased by the Canadian brokers from persons who were not insiders. Melse testified that he did not inquire of the Canadian brokers, and we are left to surmise at this point that the stock purchased through Canadian brokers had in some way come from insiders. The point is that neither Melse nor anybody at I.O.S. has any knowledge as to where the "free" stock came from. Although the staff did not take any position on "fungibility", it may be that the staff is taking the legal position that the 100,000 shares sold were the "Canadian letter stock". Even as to the "Canadian letter stock", Melse testified that he did not know that this came from Revenue insiders, but did admit that Cooper had arranged the transaction.

Last week both Sporkin and Williams told me over the telephone that the staff will recommend to the Commission that I.O.S. and certain affiliated funds be named as defendants in an injunctive action charging Section 5 violations relating to Revenue. The staff said the only question "open" at this time is whether any individuals affiliated with I.O.S. will also be named. This is a typical "negotiating" position of the staff. We have an appointment on Friday of this week to discuss this matter in Washington and to provide additional witnesses and documents requested by the staff. In the conversation last Friday, the staff took the position that although I.O.S. probably did not know that the stock was coming from insiders, they should have known through the exercise of due diligence. Apparently, they are seeking to apply an "unwitting conduit" role as a statutory underwriter to I.O.S. At this time, we do not have any information as to the amount of Revenue's securities distributed in the United States without registration, nor do we have any information as to other persons against whom the staff proposes to take action. I hope that we can obtain some of this information at the Friday meeting, and will convey it to you. For your information, enclosed is a Xerox copy of the S.E.C. release dated May 8, 1969, concerning the permanent injunction which was issued that date against officers of Revenue.

Very truly yours

Robert J. Haft

RJH:jg . Enclosure For RLLEASE Friday, May 8, 1969

-- SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Litigation Release No. 4312

The Jecurities and Exchange Commission announced that the Honorable Charles M. Metzner, United States District Judge for the Southern District of New York today issued a permanent injunction against future violation of Sections 5(a) and 5(c) of the Securities Act of 1933 in connection with the offer and sale of unregistered securities of Revenue Properties Company, Limited, its subsidiaries or successors. The defendants, all of whom, without admitting the allegations of the Complaint, consented to the entry of the injunction, are:

Revenue Properties Company Limited
Alex J. Rubin
Harry Rubin
The Alex J. Rubin Family Trust
The Harry Rubin Family Trust
Haal Securities Limited
Shirber Holdings Limited
Turtle Investments Limited
Tortoise Ventures Limited
Esther Cooper, formerly Esther Rubin
Norton Cooper, husband of Esther Cooper

Revenue Properties Company Limited is a Canadian corporation engaged in the real estate business. Alex J. Rubin is chairman of its board of directors and president of the company, and a founder of the family trust bearing his name. Harry Rubin is executive vice-president of the company and a founder of the family trust bearing his name. Together they own all the shares of Haal Securities Limited and Shirber Holdings Limited, and are shareholders of Turtle Investments Limited and Tortoise Ventures Limited. Esther Cooper is the sister of Alex and Harry Rubin, and is a shareholder of Revenue, Turtle, and Tortoise. Norton Cooper, husband of Esther Cooper, is the chief executive officer of Turtle and Tortoise and is a shareholder of Revenue.

The Commission in its complaint, among other things, alleged that the registration provisions of the Securities Act of 1933 were violated in the following manner:

(1) Revenue Properties Company Limited in late June or early July of 1968 offered and sold in Canada \$7,000,000 principal amount Convertible Sinking Fund Debentures Series A in a purported private

placement to thirty three (33) Canadian investors, who signed letters of investment intent, and imposed no restrictions to prevent the resale of these debentures or the sale of Common Shares issuable upon conversion of said debentures in violation of the securities laws of the United States.

- The Alex J. Rubin Family Trust and the Harry Rubin Family Trust sold approximately 325,000 Common Shares of Revenue Properties Company Limited, most . of which were sold at a time when a registration statement qualifying for sale in the United States tertain shares of the two said Rubin Family Trusts was pending before the Securities and Exchange Commission. The registration statement when it finally became effective omitted to list those sales which had been made by the two Rubin Family Trusts prior to the effective date of said registration statement. In addition said registration statement omitted to state that certain of the Common Shares of Revenue Properties Company Limited obtained upon conversion of the Convertible Sinking Fund Debentures Series A were being offered and sold at a time prior to the effective date of the registration statement.
- (3) Norton Cooper and Esther Cooper during the past six months sold approximately 375,000 Common Shares of Revenue Properties Company Limited which belonged originally to Esther Cooper.
- (4) In connection with the transactions described above, certain of the Common Shares of Revenue Properties Company Limited were offered and sold and delivered after sale to residents of the United States.

The defendants also consented to an order directing Revenue Properties Company Limited to furnish to each of the original purchasers and to each of the present holders of its 7 1/2 per cent Convertible Subordinated Sinking Fund Debentures, Series A, and to such other holders of Common Shares of Revenue Properties Company Limited, who obtained their shares in the transactions described in paragraphs (1) and (2) above, as the Commission may designate, copies of a notification of the court injunction, in a form approved by the Commission.

The American Stock Exchange has given material assistance to the Commission in this matter. The Commission was represented in this action by Stanley Sporkin, Associate Director, Robert M. LaPrade, Senior Trial Attorney, and William Taft Lesh, of the Division of Trading and Markets.

Document 17(b) of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

Werblow

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- O Did he do so?
- A No.
- Q Did he describe to you what papers were present at Artnur Andersen's offices?
 - A I don't recall.
 - Q William Stoddart. What function did he perform?
- A He was generally familiar with real estate accounting and auditing matters, as well as mutual funds and security dealer matters.
 - O Did he go abroad?
 - A He did.
 - Q Did he also do some work in this country?

MR. SCHWARTZ: I object to the form of

the question, particularly the word also.

MP. NOVELLO: You may answer.

THE WITNESS: Can I have that question

again, please.

(The question was read.)

- A Yes.
- Q What work did he do in this country?
- A He went to visit the IOS real estate project in Florida.

QAnything else?

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t	A	I believe that he also probably read on a pre-
2	liminary	basis some of the financial statements related to
3	that pro	ject.
4	Q	Did he prepare a report?
5	A	Do you mean in this country?
ó	Q	Yes.
7	Α	No.
8	Q	Did he prepare a report abroad?
9	A	He prepared a report for me abroad, yes.
10	. Q	Did you see that report while you were abroad?
11	Λ	Yes, I did.
12	Q	Did you bring that report back to this country?
13	А	Yes.
14	Q	Did you discuss that report with anybody in this
15	country?	
16	A	No.
7	Q	With any partner of Price Waterhouse?
8		MR. SCHWARTZ: In this country or
9	else	ewhere?
0		MR. SILVERMAN: In this country.
1	A	No.
2	Q	You don't recall discussing Mr. Stoddart's report
3	with any	person in this country; is that correct?
4		

MR. SCHWARTZ: I object to the question as repetitive. His prior answer was not that he did not recall, his answer was no. MR. NOVELLO: I think he was asked it and he has answered it, but to save time, why don't you answer it again. I did not discuss Mr. Stoddart's report with any-3 one else in the United States. 9 Mr. Von Glahn, what was his function? 10 He was familiar and is familiar with bank account-11 ing and auditing matters. 12 Q Where did he do his work? 13 A In Geneva, Ferney-Voltaire and in Zurich. 14 Q Did you see a report that he prepared? 15 Did he prepare any reports? 16 A Yes, he did. 17 Did you see those reports? Q 18 A I think there was a memorandum that he prepared. 19 I did see it. 20 Where did you see it? Q 21 In Geneva or in Ferney-Voltaire, I don't recall A 22 which. 23 Did you discuss that report with anybody in this Q 24

country?

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A Not to my knowledge.

3

Q Joseph L. Noth, he is a partner in Price Water-

4

house, isn't he?

5

A He was.

6

Q Did he participate at all in Price Waterhouse's

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functions in connection with the IOS offering?

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A He did.

9

MR. NOVELLO: I object to the form of the

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question, but the witness may answer.

11

What functions did he perform?

12

A He assisted in designing special checking proced-

13

ures that Drexel requested IOS to request Arthur Andersen

14

to carry out in connection with the June 30, 1969 unaudited

15

financial statements.

16

Q Did you see the special checking procedures that

17

A Yes.

Mr. Roth prepared?

19

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Q Where did Mr. Roth prepare these procedures?

20

A Well, he assisted me and my staff in both Geneva

21

and in Ferney-Voltaire.

22

Q Did he do work on the special checking procedures

23

in New York, to the best of your knowledge?

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Decument 18 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions Werblow

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copies of the reports that you have previously mentioned, prepared by Mr. Stoddart, Mr. von Glahn, Mr. Cameron and Mr. McDonough?

I believe so.

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MR. SILVERMAN: Mr. Novello, I call for copies of those reports.

MR. NOVELLO: I will take that under advisement.

After the meeting in Jure with Mr. Lechner in which you requested certain financial information, what happened next?

I believe I described that we did get some of that information. I guess we had another meeting at which representatives of Arthur Andersen participated.

- Where was that meeting held?
- At 60 Broad Street, at Drexel's offices
- Who from Arthur Andersen was .present? 0
- I guess they had three partners and one manager. I was there with Mr. Von Glahn from Price Waterhouse and I believe Mr. Murphy and Mr. Joyce from Shearman & Sterling were there.
- What were the names of the Arthur Andersen partners?

A Mat Tiffert was the manager. I believe Walter Ruegger and I don't recall Duncan's name from the New York office and the partner in charge of the IOS work, who was from Milan and Genoa -- his name doesn't come to mind at the moment.

Q How long did that meeting last?

A That was more than a full day meeting. It went into the night. I guess I did not -- I did not have an opportunity to finish who else was at the meeting. Maybe you are not concorned with that.

Q Please go ahead.

A I believe Mr. Browning and Mr. Ambrose were there from Drexel and I believe Mr. Sonne was in for parts of the meeting and I believe Jay Leary from IOS was there.

What was Mr. Leary's position --

A Walter Tenz was the partner in charge.

Q That was the partner in charge of the Milan office of Arthur Andersen?

A I did not mean to say the Milan office. He was in charge of the audit on Arthur Andersen's part. I know he was a resident of Milan and also in Geneva from Arthur Andersen.

Q What position did Mr. Leary hold in IOS?

- I don't recall his exact title.
- What subjects -- what topics were discussed at that meeting?

As I recall, the principal purpose of the meeting was to discuss what work Arthur Andersen could do in connection with the June 30, 1969 financial statements.

Any other topics?

1)

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I guess there were some discussion as to the length of time that it took to get out the 1969 financial statements of IOS; I guess a general discussion as to the new computer procedures that IOS had instituted with respect to salesmen's commissions.

Anything else?

I guess we talked about a time table with respect to an audit if Arthur Andersen were to undertake one.

- Did Arthur Andersen at that meeting agree to undertake an audit?
 - No, they did not. A
- Did they reach a decision at that meeting that 0 they would not undertake an audit?

MR. PETERSON: If you know.

- I don't recall.
- Did you take notes at that meeting?

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Document 19 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

TELEX

VESEL - BISCHOF
PARIS OFFICE

KNOWLTON'S EX \$ 20 6/19/732

JUNE 25, 1969

JUST RECEIVED YOUR TELEX ON I.O.S. AND WOULD LIKE TO SPEAK TO YOU ON THE PHONE CONCERNING THE MEETING. THE FOLLOWING WAS THE CONSENSUS:

THAT THE EFFECT ON DE WECK TANIS AND RICHARDS SHOULD BE EVALUATED. THERE WAS A STRONG REACTION AGAINST COMPETING FOR SOMEWHING IN WHICH THERE WOULD BE NINE MANAGERS AND ALSO A FLELING THAT THEY WOULD NOT LIKE TO LOSE A COMPETITION WHICH WE HAD ENTERED AT THE LAST MORMENT.

APOLOGIZE FOR THE DELAY IN THIS ADVICE TRIED TO CALL YOU TODAY, WILL CALL TOMORROW.

GRACE.

Grayson urphy and lom Joyce.

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Document 20 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

Werblow

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A He went overseas.

Q Did he do any part of his work in New York, to the best of your knowledge?

A I would think that he read, on a preliminary basis, some of the information we received on IOS in New York.

Q Do you know of any other activities that Mr. McDonough conducted in New York?

A I believe he visted Arthur Andersen's offices in New York.

Q What is your basis for that belief?

A In connection with our work on the mutual funds or to find out more about them, we wanted to look at the work papers of Arthur Andersen and we were advised that some of their working papers were here in New York.

Q Mr. McDonough went to Arthur Andersen's offices in New York and reviewed that material, to the best of your knowledge?

A He went there with someone else. He really provided the introductions to Arthur Andersen.

Q Who was the other person who accompanied him.

A Another member of Price Materhouse.

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-		Werblow	42
1	Q	What's his name?	
2	А	Larry Erera.	
3	Q	Did Mr. Erera file a report or a m	nemorandum that
4	you kno	w of based on his investigation of do	ocuments or work
5	papers	in Arthur Andersen's office?	•
6	A	I don't recall. I think he was on	nly there for a
7	day.		
8	Q	Did you discuss Mr. Erera's visit	with him?
9	A	Yes, I also discussed it with Mr.	Maynard.
10	Q	Is that Robert M. Maynard?	
11	А	Robert M. Maynard.	
12	Q	Anybody else?	
13	A	I am not sure, but I probably dis	cussed it with
14	Mr. McI	Donough.	/-
15	Q	Did you have this discussion in F	ew York?
16	A	No. I believe I discussed it on	the telephone from
17	Geneva	. It might have been on the telephon	e from London.
18	Q	With Mr. McDonough in New York?	
19	A	Mr. Maynard in New York.	
20	Q	With Mr. Maynard in New York. I	sec.
21		Do you know whether lir. Erera mad	e copies of the
22	Arthur	Andersen work papers?	•
23	A		
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Document 22 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

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July 7, 1939

NEWS (NEW)

To:

Mr. H. J. Berry

Mr. 3. D. Coleman

Mr. P. F. Miller, Jr.

Mr. E. J. Morehouse

Mr. C. C. Ambrose

Mr E. M. Cheston, Jr.

Mr. C. R. Sonne

Mr. P. D. Heerwagen

From: William E. S. Browning

Re: I.O.S.

Attached is the latest information we have received concerning the proposed law suit by the SEC against I.O.S. relating to alleged illegal sales of unregistered shares of Revenue Properties Co., Ltd.

W.E.S.B.

WESB: dmf

STAME .. & LAFT

ATTORNETS AT LAW

140 EAST BOM STREET . NEW YORK, N.Y. 10021

3: 668-5260

CAULE: LANSTAFT-MENTON.

BA RELO

July 2, 1939

Thomas Joyce, Esq.

Shearman & Sterling, Esqs.

20 Exchange Place
New York, New York

Re: I.O.S. - Revenue Properties Co., Ltd.

Dear Mr. Joyce:

This letter is a follow-up to my letter of June 17, 1969, on the above subject.

The staff appears to be prepared to recommend an injunctive action in the above matter. Since all the facts developed in the matter show that I.O.S. and its officers acted without intent or knowledge and that, even assuming arguendo some form of knowledge, that, as a matter of law, no violation of Section 5 as to I.O.S. was involved, we propose, in the event the staff does go to the Commission with their recommendation, to request an informal hearing before the Commission.

Accordingly, we have drafted, and enclose a copy herewith, of our proposed request for an informal hearing.

Mr. Cornfeld and I will meet with the staff tomorrow on this subject. In the event, as seems likely, that the staff cannot be dissauded from making the recommendation to the Commission, we will hand-deliver the enclosed request on Monday. In any event, the enclosure pretty well brings you up to date on the facts involved in the matter, and our dealings with the staff with regard thereto.

We trust that you will appropriately advise your client. Drexel Harriman Ripley.

Very truly yours,

Robert J. Haft

ATTORNEYS AT LAW

140 EAST SOM STREET . NEW YORK, N.Y. 10021

CABLE: LAWSYAFT BENYSHIL

July 7, 1969

Hon. Hamer Budge, Chairman Securities and Exchange Commission 500 North Capitol Street Washington, D. C.

Dear Mr. Chairman:

As counsel for I.O.S., Ltd. (S.A.), ITT, Fonditalia, related management companies, Bernard Cornfeld, C. Henry Buhl III, Joe Melse and Melvin Rosen (the "IOS Group"), we hereby respect fully request an informal hearing before the Commission.

Although the specific impetus for the filing of this request is a threatened injunctive action against the IOS Group under Section 5 of the Securities Act of 1933, the undersigned believes that the informal hearing is equally important for the purpose of disposing of questions as to the application and interpretation of the Settlement Order entered by the Commission on May 23, 1967 (the "Order"). Since the entry of the Order, a number of still unresolved questions have arisen in dealings with the Staff; it is in the interest of all concerned that such questions be definitively disposed of at the earliest moment.

THREATENED INJUNCTIVE ACTION I.

- A. In early May of 1969, staff members of the Division of Trading and Markets telephoned the undersigned and requested that Joe Melse be produced as soon as possible for formal testimony before the Staff in connection with transactions in shares of Revenue Properties Company, Limited ("Revenue"). This was the first notice TOS had of the then pending investigation of Revenue.
 - 3. Melse testified on May 6 and, as requested, brought relevant documents along with him. In order to meet the Staff's request that he testify "immediately", Melse had to cancel a number of important engagements in Europe, spend time reviewing his files for appropriate documents

and fly to the United States over the weekend. He was produced by 100 volumearily and without any order then having been entered.

C. The substance of Melse's testimony was as follows:

He has had no substantial connection with either the management of investments in United States securities or the operation of United States securities has a consequence, he has little or no acquaintance with federal securities laws. He never anticipated that his activities would require any such acquaintance.

He is a senior portfolio manager for IOS, having direct charge of all portfolio investments by IOS-affiliated funds in non-United States securities. He is responsible for the management of more than \$300 million invested on a continuing basis in Canadian, European and Japanese securities. The decisions to buy and sell shares of Revenue for the portfolios of IIT and Fonditalia were solely his.

He had first purchased shares of Revenue for fund portfolios in June of 1968. In October of 1968, he decided upon the purchase of 100,000 shares of Revenue, such 100,000 shares as "Canadian investment letter", and regarded to resale restrictions normally applicable in Canada to such category of stock.

The 100,000 shares of "Canadian letter stock" have not been sold, but are still held in the portfolio of IIT.

However, subsequent to the purchase of the 100,000 shares, there have been a series of both purchases and sales of Revenue stock for the portfolios of both TIT and Fonditalia. All of such purchases and all of such sales, except for sales involving an aggregate of 40,000 shares, were made in the Canadian securities markets and through non-affiliated Canadian broker-dealers.

Certain of the purchases of Revenue shares were "arranged" by Norman Cooper, known to Melse to be the brother-in-law of the president of Revenue. However, except for the 100,000 shares of "Canadian letter stock", Cooper assured Melse that stock purchased in block sales "arranged" by accepted Cooper's representations on resale. Melse of the Revenue shares and made no further inquiry.

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At the time of the Lipper statement Melse was in the process of selling Revenue shares in the Canadian market. Without being aware of any United States securities law problems that might arise as a result of his actions, Melse thereupon gave orders to sell 40,000 shares of Revenue stock on the American Stock Exchange.

- D. Prior to the date Melse testified, the Staff had information which tended to show that only 15,000 shares of Revenue stock had been distributed in the United States by IOS-affiliated entities. As a result of Melse's testimony and the documents produced, the Staff stated that an aggregate of:40,000 shares were so distributed. As of the undersigned's meeting with the Staff on Friday, June 27, the Staff stated that the number of shares was still 40,000 which could be "traced" but that some of the shares which were sold in Canada "might" have found their way into the United States.
- Week of June 9, 1969, the Staff requested that IOS produce Melvin Rosen, Bernard Cornfeld and C. Henry Buhl III for formal testimony. After the undersigned had consulted with Cornfeld, who then was in Geneva and was not planning to come to the United States until the fall, the undersigned stated to the Staff that Mr. Cornfeld had no knowledge whatsoever of any transactions in Revenue shares by any person or entity. The undersigned thereupon offered the Staff an unqualified affidavit by Cornfeld to such effect. Thereafter, the Staff did not pursue the request that Cornfeld appear to testify.
- F. As to the requested appearance of Buhl to testify, the undersigned advised the Staff that Buhl was then on his way from Geneva to Australia, but that Buhl could be produced for testimony during the week of June 23. The voluntary appearance of Buhl for testimony on June 27 was thereupon scheduled.

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The substance of Mr. Rosen's testimony was as follow:

He is an American citizen, residing in Geneva, Switzerland. He was hired by IOS in the late summer of 1968 to act as Mr, Buhl's deputy and to be in charge of administrative functionings of the investment management departments of IOS and its affiliates. His duties included acting as "compliance officer" with respect to the Order and related matters arising under federal securities laws.

The portfolio management for all IOS-affiliated funds is clearly separated into United States and non-United States securities segments. Rosen continuously supervised and monitored all recommendations regarding the purchase and sale of United States securities, with a view, among other things, to preventing potential violations of the Order. Perhaps mistakenly, purchases and sales of non-United States securities portfolios have not been subject to such continuous and stringent controls by him.

He had no knowledge of who the actual sellers were of Revenue shares to IOS-affiliated funds. He knew that Revenue was a Canadian company and that its shares were very actively traded on the Toronto Stock Exchange, which he believed to be the principal market for ... purchases and sales of Revenue shares. In addition, he thought it inconceivable that any sales of Revenue shares might take place other than in the Canadian markets, because under the rules of the Toronto Stock Exchange the selling funds receive full benefit of volume discounts, and IOS-affiliated banks participate in commission-sharing benefits.

Rosen was not in Geneva at the time Melse had his conversation with Lipper. Rosen was in Nice, France, on a short vacation. Up to shortly after his return from vacation, having no conception of the fact that Melse might sell Revenue or any other shares in New York, Rosen had not established any procedures to control purchases or sales by Melse of oreign securities into the United States securities markets.

Rosen further testified that he might have been "negligent" or "neglectful" in not establishing procedures or conceiving of the possibility that such procedures might

be necessary, and did not "focus" on this problem even after his return from vacation.

- I. Upon the conclusion of Rosen's testimony, the Staff stated that there was no need for Buhl to testify, and that the Staff had firmly resolved to bring an injunctive action against IOS. The scheduled June 27 injunctive action against IOS. The scheduled June 27 meeting was then to be devoted to exploration of the possible disposition of the proposed injunctive action.
 - J. The undersigned was advised by the Staff on June 27

 that an aggregate of nearly one million shares of

 Revenue stock was involved in the alleged distribution of

 unregistered stock in the United States. Of this aggregate,

 unregistered stock in the United States were traceable to

 the Staff alleged that 40,000 shares were traceable to

 transactions by IOS-affiliated funds.
 - K. The undersigned has subsequently ascertained (and advised the Staff) that: (i) during the period from June of the Staff) that: (i) during the period from June of 1968 (when IOS-affiliated funds first invested in Revenue shares were shares) through January of 1969 (when Revenue shares were admitted to listing on the American Stock Exchange), the volume of trading in Revenue shares in the over-the-counter volume of trading in Revenue shares, the volume of trading since the listing of Revenue shares, the volume of trading on the American Stock Exchange, especially in the "foreign" on the American Stock Exchange, especially in the volume of shares, has been relatively small compared to the volume of trading on the Toronto Stock Exchange.
 - L. Further, the undersigned has ascertained that the volume of trading in Revenue shares on the Toronto Stock of trading in Revenue shares on the Toronto Stock exchange was particularly active in April of 1969, when the sales of the 40,000 Revenue shares were made by IOS-affiliated sales of the United States. In fact, Revenue stock was funds in the United States. In fact, Revenue stock was funds in the united States or the second most actively either the most actively traded or the second most actively traded industrial stock on the Toronto Stock Exchange on traded industrial stock on the Toronto Stock Exchange on the relevant days in April.
 - M: This is very reverse of the usual situation in which ... Canadian stock "dribbles" into the United States by ... Canadian stock "dribbles" into the United States by virtue of a limited Canadian and active American market.

 In view of such circumstances, it could not have been reasonably. In view of such circumstances, it could not have been reasonably. Anticipated by the responsible officers of IOS and its affiliates that the sale of 40,000 shares of affiliates that the sale of 40,000 shares into would be made in the United States in violation of Section 5 would be made in the United States in violation of 40,000 shares into of the Securities Act of 1933. The sale of 40,000 shares into of the Securities occurred only through a mere coincidence the United States occurred only through a mere coincidence of unlikely circumstances -- namely, that (i) the Senior of unlikely circumstances -- namely, that (i) the Senior "compliance officer" (Rosen) was away on vacation, and (ii) the

sales were ordered by a foreign national portfolio manager (Melse), rotally unknowledgeable as to federal securities matters, as a result of an unsolicited statement from Lipper that the shares (then in the process of being sold on the Toronto Stock Exchange) could better be sold into the United States markets. Further, Melse (as well as every other person associated with IOS and its affiliates) had no reason to know that any of the Revenue shares being sold had come from insiders and were not "free" for sale. (Note: The 100,000 shares of "Canadian letter stock" acquired by IIT remains to this date unsold and in the IIT portfolio.)

This happenstance exposed a previously unrecognized ... "gap" in the system of controls introduced by TOS to ensure compliance with the Order and federal securities laws. This "gap" has now been "plugged" so as to prevent in the future any inadvertent and unknowing conduit role in the distribution of unregistered securities into the United States. The "gap" was a very small one through which only a small number of securities could have filtered. Specifically, the "gap" was a failure to recognize the need to instruct a. foreign national portfolio manager dealing with exclusively non-United States securities (i) to inquire prior to purchasing foreign securities in a foreign market (where the principal sales market was also foreign and where sales historically by such manager were exclusively on the foreign markets) as to the actual soller of the securities so as to escertain that the seller is not an insider of the company, . and (ii) prior to selling a portion of such securities into · the United States markets, to fully establish that such sales will be in compliance with the federal securities laws and the then current doctrines of "fungibility" of the Staff.

O. The control that has been instituted to cover this is an absolute one: No sales can be made by any IOS-affiliated fund into the United States markets unless and until a compliance officer of IOS has specifically considered the legality of such sale from the standpoint of compliance with the Order and applicable securities laws. This, of course, has been done previously as to transactions for the United States portfolios of all IOS-affiliated funds prior to and subsequent to the sales of Revenue shares in April of 1965. After recognizing the "gap", the same procedure has been instituted in situation where dual markets exist, i.e. where there are foreign and United States markets in a particular entity.

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P. Although the Staff apparently was prepared to commence in action against the TOS Group solely on the basis of the 15,000 shares which they knew of prior to Melse's testimony, and are apparently propared to recommend action, to the Commission with respect to the 40,000 shares, we respectfully request that, prior to a Commission decision on the Staff's apparent recommendation, the IOS Group be heard on the subject. We can understand a Staff recommendation that immediate action be taken to obtain injunctive relief in a situation where there had been a past history of widespread distribution of large amounts of securities in the United States without registration and where the distributors had acted knowingly (and in usual cases pursuant to a plan or conspiracy to distribute).

need for the action to be instituted forthwith because both elements are lacking. Further, we feel by reason of the unprecedented nature of this matter that the Commission should have time for full consideration of the facts and issues. The extensive publicity which the mere institution of such an action would engender should give sufficient reason for careful consideration of the Staff's anticipated recommendation. Indeed, it was only by reason of the lack of full diligence on the part of the press that extensive publicity did not attach to IOS at the time of the filling of the complaint by the Staff against Revenue, its officers and others on or before May 3, 1969. In paragraph 25 of that complaint, filed in the United States District Court for the Southern District of New York, the Staff alleged as follows:

"A substantial number of the Common Shares described in paragraphs 21 and 22 above were purchased by entities affiliated with IOS Ltd. and thereafter certain of said shares were distributed in transactions effected on the American Stock Exchange."

Sometime after this date, the Staff made clear that it was their firm intention to recommend to the Commission commencement of a separate action against the IOS Group.

R. So that the Staff and the Commission need not feel
that such delay in the institution of an action as
may be occasioned by the granting of this request for an
informal hearing will in any way prejudice the Commission's
interest or cause irreparable damage, the IOS Group hereby
represents to the Commission that, until this matter has been
disposed of by the Commission, no IOS-affiliated entity will purchase
sell any shares of Revenue stock, without the prior assent and

concurrence of the Staff. (The proviso in the last sentence is intended solely to meet the possible situation where, during the pendency of this matter before the Commission, an TOS-affiliated entity proposed to sell Revenue stock under circumstances that make it clear to such entity and to the Staff that no possible violation of Section 5 would be involved. Such an exception would, of course, be applicable even in the event an injunction had previously been entered.)

NEED FOR INTERPRETATION OF THE ORDER

The undersigned and members of the Staff have spent an inc nate amount of time and effort subsequent to the ent, of the Order in May of 1967 in seeking to resolve a myriad of questions of interpretation which have arisen under the language of the Order. After an extended series of meetings on the subject, the undersigned prepared and submitted to the Staff a letter dated March 5, 1969, proposing to compromise some of those questions. Such letter was a redraft of a prior letter. The letter of March 5 was submitted with a reasonable expectation that the proposals would be accepted, with minor or no modifications, within a reasonably short period of time. This has not occurred. The fact that these and other questions remain unresolved to date has significantly and adversely affected the operations of IOS and affiliates, not only from the March 5 date, but from a period of time considerably prior thereto when the questions were first raised. The impetus behind the proposal and the Staff's seeming tentative acceptance thereof was, on both sides, we presume, a strong desire to put to rest the "difficulties" between IOS and affiliates and the Commission.

In the sincere hope that we can through the medium of an informal hearing before the Commission definitively put to rest most, if not all, of these difficulties, we respectfully request that the informal hearing cover not only the narrow confines of the Revenue matter, but also those matters which IOS and the Staff feel are causing concern to either or both.

We do feel that moving the situs for the resolution of outstanding issues from the Commission and its Staff to the Courthouse would, at this time, serve only to exacerbate the "difficulties". A carefully prepared and reasoned "give-and take" informal hearing before the Commission would, we believe, serve to ameliorate, and perhaps dispose of, all outstanding issues beneficially to IOS and the Commission. We believe that escalation of these difficulties would only foreclose prospective and mutually beneficial solutions. Accordingly, we respectfully request an informal hearing at a time convenient to the Commission and request that there be permitted to appear on behalf of IOS the undersigned, wilson W. Wyatt, Esq., and Edward M. Cowett, Esq.

We are enclosing 15 copies of this request so that you may circulate it among the other members of the Commission and interested members of the Staff.

. Very truly yours,

Robert J. Haft

AJA:jg Enclosures

Document 23 of Appendix II to Plaintiff's Memorandu of Law in Opposition to Defendants' Motions

Werblow

12

Did he get in touch with you at a later time? 0 Yes. A How long after your luncheon meeting? 0 A couple of days later. A Did he get in touch with you on the telephone? () 0 7 Λ Yes. What did he say to you? 3 0 He said that they were trying to arrange a meeting 9 A for us to meet with the treasurer of IOS and he reviewed 10 with us our availability. 11 Who was the treasurer of IOS? 12 Q 13 Melvin Lechner. A Did such a meeting take place between you and 14 15 Mr. Lechner? 16 Yes. A Who was present at the meeting? 17 The other people present were Mr. yon Glahn, Mr. 18 Stoddart, Mr. Biegler was in for part of the meeting, Mary 19 Ann Burge and Mr. Jack McDonough of Price Waterhouse were 20 at the meeting and there were some people from Shearman & 21 Sterling and some people from Drexel. 22 Do you recall who was there from Shearman & 23

24

25

Sterling?

21

22

23

24

25

Yes. A

Yas.

A

him?

Q Did he give that material to you?

Did Mr. Lechner have documents or material with

1	Werblow .	
2	A Yes.	
3	Q Can you identify the material that was given to	
4	you?	
5	A It was an information brochure that had been pre-	
6	pared by IOS personnel describing the company, a so-called	
7	blue book.	
8	Q Anything else?	
9	A Not that I recall.	
10	Q Did anybody else give you documents at that meet-	
11	ing?	
12	A No.	
13	Q Do you still have the information brochure in your	
14	possession?	
15	A I believe so.	
16	MR. SILVERMAN: Mr. Novello, I call for	
17	its production.	
18	MR. MOVELLO: I will take that under ad-	
19		
20	MR. SILVERMAN: And you will let me	
21		
22	MR. NOVELLO: Yes.	
2:		
2.	4 Q Now long did the meeting last?	

2	A	As I recall, it took most of the day.
3	Q	Now, without getting into who said what to whom,
4	can you	state the substance of what was discussed at that
5	meeting?	
6	A	Mr. Lechner described to us the general operations
7	from a f	inancial and accounting viewpoint of IOS and just
8	generall	y gave us a description of the company's method of
9	operating	3 • ·
10	Q	Did anybody else speak?
11	A	My recollection is many people spoke.
12	Q	Was Mr. Lechner the only representative of IOS
13	present?	
14	A	That was my recollection.
15	Q	You don't recall Mr. Cowett there?
16	A	Mr. Cowett was definitely not there.
17	Q	Do you recall any questions that were asked of
18	Mr. Lechner?	
19	A	One question I do recall.
20	0	What was that question?
21	A	It had to do with the timing of the preparation
22	of the J	une 30, 1969 financial statements of IOS.
23	Q	Who asked the question?
24	Λ	I guess Price Waterhouse asked the question;
	II .	

Werblow

2 Dresel asked the question and Shearman & Sterling.

There was a great interest in the time table of the offering; the time table for carrying out inquiries into IOS's operations.

Q What was the answer to the question?

MR. SCHWARTZ: I object to the question as being beyond the scope of the consent order and beyond the scope of what is necessary for judicial determination of the issues of class and subject matter.

I think you are entitled to inquire into what was done in the United States and in a general way the subject matter of meetings, but I see no occasion and no necessity for inquiring into what was said at any such meeting once you have established the general nature of the discussion.

MR. NOVELLO: Mr. Silverman, I understand that there is a consent order with respect to discovery. I don't claim to be able to interprete it myself, but I would be guided by the parties interpretations of that order and if -- I have heard Mr. Schwartz' interpretation.

If you have any other interpretation, I would be happy to hear it, but --

COMMERCE REPORTING CO. NASSAU STREET, NEW YORK, N Y. 10038 . WOrth 4-3567

23

25

discussed?

1	200A-Y/
	Werblow 24
2	A He indicated that they invested the mutual
3	funds that they managed invested in United States securities
+	Q Anything elsa?
5	A I am not sure if he also discussed the method of
6	receiving advice from U.S. investment advisors.
7	Q What was that method?
8	MR. SCHWARTZ: I object to the
9	question on the grounds previously stated. I think you
10	will get more than enough for present purposes if you
11	get information about the subject matter of the dis-
12	cussion which the witness has supplied you.
13	MR. NOVELLO: I think, Mr. Silverman,
14	he has already indicated that he wasn't sure whether
15	the subject was even discussed.
16	Q Did you subsequently receive information concerning
17	the method used to give investment advice to 103 managed
18	funds?
19	MR. MOVELLO: Excuse ma, you mean sub-
20	sequent to the meeting?
21	MR. SILVERMAN: Yes.
22	MR. NOVELLO: Fither in the meeting or
23	ourside of the meeting?

Either in the meeting or

MR. SILVERMAN:

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208 A-48

Document 24 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

July 7, 1939

YEMP ATTY

To:

Mr. H. J. Berry

Mr. 3. D. Coleman Mr. 7. 7. Miller, Jr.

Mr. E. J. Morenouse

Mr. C. C. Ambrose

Mr. E. M. Cheston, Jr.

Mr. C. R. Sonne

Mr. P. D. Heerwagen

From:

William E. S. Browning

Re:

I.O.S.

Attached is the latest information we have received concerning the proposed law suit by the SEC against I.O.S. relating to alleged illegal sales of unregistered shares of Revenue Properties Co., Ltd.

W.E.S.B.

WESB: dmf

208 A-41

ATTOMACTS AT LAW

AMELL & LAFT

140 EAST 80" STREET . NEW YORK, N.Y. 10021

3: 628-5250

CAULE: LANSTAFT-MEWICH.

BY HAND

July 2, 1959

Thomas Joyce, Esq.
Shearman & Sterling, Esqs.
20 Exchange Place
New York, New York

Re: FI.O.S. - Revenue Properties Co., Ltd.

Dear Mr. Joyce:

This letter is a follow-up to my letter of June 17, 1969, on the above subject.

The staff appears to be prepared to recommend an injunctive action in the above matter. Since all the facts developed in the matter show that I.O.S. and its officers acted without intent or knowledge and that, even assuming arguendo some form of knowledge, that, as a matter of law, no violation of Section 5 as to I.O.S. was involved, we propose, in the event the staff does go to the Commission with their recommendation, to request an informal hearing before the Commission.

Accordingly, we have drafted, and enclose a copy herewith, of our proposed request for an informal hearing.

Mr. Cornfeld and I will meet with the staff tomorrow on this subject. In the event, as seems likely, that the staff cannot be dissauded from making the recommendation to the Commission, we will hand-deliver the enclosed request on Monday. In any event, the enclosure pretty well brings you up to date on the facts involved in the matter, and our dealings with the staff with regard thereto.

We trust that you will appropriately advise your client, Drexel Harriman Ripley.

Very truly yours,

Robert J. Haft

RJH:wm

208 A-50

STAN IAFT

ATTORNEYS AT LAW

140 EAST SOM STREET . NEW YORK, N. Y. 10021

1:000.5200

CADLE: LAWSTAFT HEMYSRA

July 7, 1969

Hon. Hamer Budge, Chairman Securities and Exchange Commission 500 North Capitol Street Washington, D. C.

Dear Mr. Chairman:

As counsel for I.O.S., Ltd. (S.A.), IIT, Fonditalia, related management companies, Bernard Cornfeld, C. Henry Buhl III, management and Melvin Rosen (the "IOS Group"), we hereby respect-fully request an informal hearing before the Commission.

Although the specific impetus for the filing of this request is a threatened injunctive action against the IOS Group under Section 5 of the Securities Act of 1933, the undersigned believes that the informal hearing is equally important for the purpose of disposing of questions as to the application and interpretation of the Settlement Order entered by the Commission on May 23, 1967 (the "Order"). Since the entry of the Order, a number of still unresolved questions have arisen in dealings with the Staff; it unresolved cuestions have arisen in dealings with the Staff; it is in the interest of all concerned that such questions be definitively disposed of at the earliest moment.

I. THREATENED INJUNCTIVE ACTION

- A. In early May of 1969, staff members of the Division of Trading and Markets telephoned the undersigned and requested that Joe Melse be produced as soon as possible for formal testimony before the Staff in connection with transactions in shares of Revenue Properties Company, Limited ("Revenue"). This was the first notice IOS had of the then pending investigation of Revenue.
- B. Melse testified on May 6 and, as requested, brought relevant documents along with him. In order to meet the Staff's request that he testify "immediately", Melse had to cancol a number of important engagements in Europe, spend time reviewing his files for appropriate documents

and fly to the United States over the weekend. He was produced by 103 volumearily and without any order then having been entered.

C. The substance of Melse's testimony was as follows:

He has had no substantial connection with either the management of investments in United States securities or the operation of United States securities has a consequence, he has little or no acquaintance with federal securities laws. He never anticipated that his activities would require any such acquaintance.

He is a senior portfolio manager for TOS, having direct charge of all portfolio investments by TOS-affiliated funds in non-United States securities. He is responsible for the management of more than \$300 million invested on a continuing basis in Canadian, European and Japanese securities. The decisions to buy and sell shares of Revenue for the portfolios of IlT and Fonditalia were solely his.

He had first purchased shares of Revenue for fund portfolios in June of 1968. In October of 1968, he decided upon the purchase of 100,000 shares of Revenue, such 100,000 shares as "Canadian investment letter", and regarded to resale restrictions normally applicable in Canada to such category of stock.

The 100,000 shares of "Canadian letter stock" have not been sold, but are still held in the portfolio of IIT.

However, subsequent to the purchase of the 100,000 shares, there have been a series of both purchases and sales of Revenue stock for the portfolios of both TIT and Fonditalia. All of such purchases and all of such sales, except for in the Canadian securities markets and through non-affiliated Canadian broker-dealers.

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208 A-S

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At the time of the Lipper statement Melse was in the process of selling Revenue shares in the Canadian market. Without being aware of any United States securities law problems that might arise as a result of his actions, Melse thereupon gave orders to sell 40,000 shares of Revenue stock on the American Stock Exchange.

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- Melse's testimony was concluded on May 6. During the week of June 9, 1969, the Staff requested that IOS produce Melvin Rosen, Bernard Cornfeld and C. Henry Buhl III for formal testimony. After the undersigned had consulted with Cornfeld, who then was in Geneva and was not planning to come to the United States until the fall, the undersigned stated to the Staff that Mr. Cornfeld had no knowledge whatsoever of any transactions in Revenue shares by any person or entity. The undersigned thereupon offered the Staff an ungualified affidavit by Cornfeld to such effect. Thereafter, the Staff did not pursue the request that Cornfeld appear to testify.
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- H. The substance of Mr. Rosen's testimony was as follows:

He is an American citizen, residing in Geneva, Switzerland. He was hired by IOS in the late summer of 1968 to act as Mr, Puhl's deputy and to be in charge of administrative functionings of the investment management departments of IOS and its affiliates. His duties departments of IOS and its affiliates. His duties included acting as "compliance officer" with respect to the Order and related matters arising under federal securities laws.

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Rosen was not in Geneva at the time Melse had his conversation with Lipper. Rosen was in Nice, France, on a short vacation. Up to shortly after his return from short vacation, having no conception of the fact that Melse vacation, having no conception of the fact that Melse night sell Revenue or any other shares in New York, might sell Revenue or any other shares in New York, Rosen had not established any procedures to control Rosen had not established any procedures to control purchases or sales by Melse of foreign securities into the United States securities markets.

Rosen further testified that he might have been "negligent" or "neglectful" in not establishing procedures or conceiving of the possibility that such procedures might

be necessary, and did not "focus" on this problem even after his return from vacation.

- I. Upon the conclusion of Rosen's testimony, the Staff stated that there was no need for Buhl to testify, and that the Staff had firmly resolved to bring an injunctive action against ICS. The scheduled June 27 meeting was then to be devoted to exploration of the possible disposition of the proposed injunctive action.
- J. The undersigned was advised by the Staff on June 27 that an aggregate of nearly one million shares of Revenue stock was involved in the alleged distribution of unregistered stock in the United States. Of this aggregate the Staff alleged that 40,000 shares were traceable to transactions by Tos-affiliated funds.
- X. A The undersigned has subsequently ascertained (and advised the Staff) that: (i) during the period from June of 1968 (when IOS-affiliated funds first invested in Revenue shares) through January of 1969 (when Revenue shares were admitted to listing on the American Stock Exchange), the admitted to listing on the American Stock Exchange), the volume of trading in Revenue shares in the over-the-counter volume of trading in the United States was relatively small, and (ii) mark to in the United States was relatively small, and (iii) since the listing of Revenue shares, the volume of trading on the American Stock Exchange, especially in the "foreign" shares, has been relatively small compared to the volume of trading on the Toronto Stock Exchange.
 - L. Further, the undersigned has ascertained that the volume of trading in Revenue shares on the Toronto Stock of trading in Revenue shares on the Toronto Stock Exchange was particularly active in April of 1969, when the sales of the 40,000 Revenue shares were made by IOS-affiliated sales of the United States. In fact, Revenue stock was funds in the United States. In fact, Revenue stock was either the most actively traded or the second most actively either the most actively traded or the second most actively traded industrial stock on the Toronto Stock Wchange on the relevant days in April.
 - Mi This is very reverse of the usual situation in which a Canadian stock "dribbles" into the United States by wirtue of a limited Canadian and active American market. In view of such circumstances, it could not have been reasonably. In view of such circumstances, it could not have been reasonably. In view of such circumstances, it could not have been reasonably. In view of such the responsible officers of IOS and its affiliates that the sale of 40,000 shares of section 5 would be made in the United States in violation of Section 5 would be made in the United States in violation of Section 5 the Securities Act of 1933. The sale of 40,000 shares into of the Securities Act of 1933. The sale of 40,000 shares into the United States occurred only through a mere coincidence of unlikely circumstances namely, that (i) the Senior of unlikely circumstances namely, that (i) the Senior of unlikely circumstances namely, that (i) the Senior of unlikely circumstances namely, that (ii) the Senior of unlikely circumstances namely, that (iii) the

sales were ordered by a foreign national portfolio manager (Malse), totally unknowledgeable as to federal securities matters, as a result of an unsolicited statement from Lipper that the shares (then in the process of being sold on the Toronto Stock Exchange) could better be sold into the United States markets. Further, Melse (as well as every other person associated with IOS and its affiliates) had no reason to know that any of the Revenue shares being sold had come from insiders and were not "free" for sale. (Note: The 100,000 shares of "Canadian letter stock" acquired by IIT remains to this date unsold and in the IIT portfolio.)

- This happenstance exposed a previously unrecognized .. "gap" in the system of controls introduced by IOS to ensure compliance with the Order and federal securities laws. This "gap" has now been "plugged" so as to prevent in the ; future any inadvertent and unknowing conduit role in the distribution of unregistered securities into the United States. The "gap" was a very small one through which only a small number of securities could have filtered. Specifically, the "gap" was a failure to recognize the need to instruct a. foreign national portfolio manager dealing with exclusively non-United States securities (i) to inquire prior to purchasing foreign securities in a foreign market (where the principal sales market was also foreign and where sales historically by such manager were exclusively on the foreign markets) as to the actual soller of the securities so as to escertain that the seller is not an insider of the company, . and (ii) prior to selling a portion of such securities into . the United States markets, to fully establish that such sales will be in compliance with the federal securities laws and the then current doctrines of "fungibility" of the Staff.
 - O. The control (at has been instituted to cover this is an absolute one: No sales can be made by any IOS-affiliated fund into the United States markets unless and until a compliance officer of IOS has specifically considered the legality of such sale from the standpoint of compliance with the Order and applicable securities laws. This, of course, has been done previously as to transactions for the United States portfolios of all IOS-affiliated funds prior to and subsequent to the sales of Revenue shares in April of 1969. After recognizing the "gap", the same procedure has been instituted in situation where dual markets exist, i.e. where there are foreign and United States markets in a particular entity.

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P. Although the Staff apparenuly was prepared to commence in action against the TOS Group solely on the basis of the 15,000 shares which they knew of prior to Melse's testimony, and the apparently prepared to recommend action to the Commission with respect to the 40,000 shares, we respectfully request that, prior to a Commission decision on the Staff's apparent recommendation, the IOS Group be heard on the subject. We can understand a Staff recommendation that immediate action be taken to obtain injunctive relief in a situation where there had been a past history of widespread distribution of large amounts of sacurities in the United States without registration and where the distributors had acted knowingly (and in usual cases pursuant to a plan or conspiracy to distribute).

need for the action to be instituted forthwith because both elements are lacking. Further, we feel by reason of the unprecedented nature of this matter that the Commission should have time for full consideration of the facts and issues. The extensive publicity which the mere institution of such an action would engender should give sufficient reason for careful consideration of the Staff's anticipated recommendation. Indeed, it was only by reason of the lack of full diligence on the part of the press that extensive publicity did not attach to IOS at the time of the filing of the complaint by the Staff against Revenue, its officers and others on or before May 8, 1969. In paragraph 25 of that complaint, filed in the United States District Court for the Southern District of New York, the Staff alleged as follows:

"A substantial number of the Common Shares described in paragraphs 21 and 22 above were purchased by entities affiliated with IOS Ltd. and thereafter certain of said shares were distributed in transactions effected on the American Stock Exchange."

Sometime after this date, the Staff made clear that it was their firm intention to recommend to the Commission commencement of a separate action against the IOS Group.

R. So that the Staff and the Commission need not feel
that such delay in the institution of an action as
may be occasioned by the granting of this request for an
informal hearing will in any way prejudice the Commission's
interest or cause irreparable damage, the IOS Group hereby
represents to the Commission that, until this matter has been
disposed of by the Commission, no IOS-affiliated entity will purchas
sell any shares of Revenue stock, without the prior assent and

concurrence of the Scaff. (The proviso in the last sentence is intended solely to meet the possible situation where, furing the pendency of this matter before the Commission, an TOS-affiliated entity proposed to sell Revenue stock under circumstances that make it clear to such entity and to the Staff that no possible violation of Section 5 would be involved. Such an exception would, of course, be applicable even in the event an injunction had previously been entered.)

NEED FOR INTERPRETATION OF THE ORDER

The undersigned and members of the Staff have spent an inordinate amount of time and effort subsequent to the entry of the Order in May of 1967 in seeking to resolve a myriad of questions of interpretation which have arisen under the language of the Order. After an extended series of meetings on the subject, the undersigned prepared and submitted to the Staff a letter dated March 5, 1969, proposing to compromise some of those questions. Such letter was a redraft of a prior letter. The letter of March 5 was submitted with a reasonable expectation that the proposals would be accepted, with minor or no modifications, within a reasonably short period of time. This has not occurred. The fact that these and other questions remain unresolved to date has significantly and adversely affected the operations of IOS and affiliates, not only from the March 5 date, but from a period of time considerably prior thereto when the questions were first raised. The impetus behind the proposal and, the Staff's seeming tentative acceptance thereof was, on both sides, we presume, a strong desire to put to rest the "difficulties" between IOS and affiliates and the Commission.

In the sincere hope that we can through the medium of an informal hearing before the Commission definitively put to rest most, if not all, of these difficulties, we respectfully request that the informal hearing cover not only the narrow confines of the Revenue matter, but also those matters which los and the Staff feel are causing concern to either or both.

We do feel that moving the situs for the resolution of outstanding issues from the Commission and its Staff to the
Courthouse would, at this time, serve only to exacerbate the
Courthouse would, at this time, serve only to exacerbate the
"difficulties". A carefully prepared and reasoned "give-and
"difficulties". A carefully prepared and reasoned "give-and
take" informal hearing before the Commission would, we believe,
serve to ameliorate, and perhaps dispose of, all outstanding
issues beneficially to IOS and the Commission. We believe that
escalation of these difficulties would only foreclose prospective and mutually beneficial solutions.

Accordingly, we respectfully request an informal hearing at a time convenient to the Commission and request that there be permitted to appear on behalf of IOS the undersigned, Wilson W. Wyatt, Esq., and Edward M. Cowett, Esq.

We are enclosing 15 copies of this request so that you may circulate it among the other members of the Commission and interested members of the Staff.

Very truly yours,

Robert J. Haft

RJH:jg Enclosures

Document 25 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

		. 2	
DATE	PLACE	TIME	ACTIVITIES
5/29	New York	3/4	Conference with Joyce
0/2	•	1.	Conference with Joyce Telephone conversation with Browning
6/4		2	Telephone conversation with Browning and Berry
6/6		3	Telephone conversations with Haft, Coleman and Berry and Securities and Exchange Commission Conference with Browning, Sonne, Joyce Letter to Securities and Exchange Commission
6/9	Washington	6	Conference with Securities and Exchange Commission and memo
6/10	New York	3/4	Telephone conversations with Coleman and Haft Conference with Joyce
6/11	Philadelphia	7	Meeting in Philadelphia with Coleman
6/12	New York	1/4	Conference with Joyce
6/13		1	Conference with Joyce Telephone conversations with Browning
6/23		. 1	Conference with Ambrose and Nangle
6/24		1 1/2	Letter to Sonne Conference with Ambrose, Sonne and Nangle
7/4	•	2	Conference with Browning
7/3		6 1/2	Conference at Price Waterhouse with Joyce, Nangle, Werblau
7/7		7	Telex to McGovern Conference with Werblau Nangle at Price Naterhouse Telephone conversation with Merritt of Wilkie Farr

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previously, Mr	. Browning,	Mr. Sonne and	a Mr.	Peter
Heerwage and	a couple of	secretaries.		

On the part of Shearman & Sterling, Murphy and sufficient associates and partners as he selected. In fact, they were Mr. Thomas Nangle, who I mentioned before, who was resident in Geneva; Thomas Joyce, who was a senior assistant and later a partner of Shearman & Sterling; another associate, whose name I don't remember and a team from Price Waterhouse headed by Mr. Werblow. There were about six of them.

- Who selected the members of the Drexel team?
- I think Berry and I did.
 - Where did you make that selection? Q
 - In New York, Philadelphia. A
- Did you and the other members of the Drexel group, Shearman & Sterling and Price Waterhouse go together to Geneva?
- No, I think we went at various times. I don't remember the exact order of procedure.
- After the groups were composed, did you have any meetings among the various groups?
- I don't remember having any meetings with the groups until we got to Geneva. I had a meeting with Mr. Cowett of IOS in New York prior to going to Geneva.

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Q How did that meeting come about?

A I think--I don't remember. I think I asked for

Q Did you call Mr. Covett?

A Mr. Cowett happened to be in New York and I think I talked with him there and asked to have a meeting.

Q Where did the meeting take place?

A It took place at breakfast at the Carlyle Hotel.

Q How long did it last?

A About an hour, I would suggest, or maybe a little longer.

Q Now, if you can give me what you said to Mr. Cowett, if you can restate what you said to Mr. Cowett and what he said to you, all right. If you can't, would you state the substance of your conversation with him.

A I certainly can't oblige you with the former, but the substance of it was that we were going to send this team to deneva and that we wanted to enter into a firm agreement with him or a reasonably firm agreement when we got to Geneva and we discussed again some of these accounting matters as to what could and couldn't be done in the accounting area in order to meet the September offering date.

We discussed possible terms of the offering,

2 mostly having to do with price, which we said had to 3 remain flexible.

I think that was the main areas discussed.

Q What was the reason for your insistence that price remain flexible.

A Well, I mean, you never can tell what market conditions are going to be like or, for that matter, what the June figures would be like.

Q Was there any formula discussed at that meeting with Mr. Cowett as to how the securities would be priced?

A I think we talked in terms of a price earnings ratio of around 20 times the June unaudited figures times two, but that was just, you know, arranged. It wasn't anything firm or final.

- Q Who suggested 20 times June earnings times two?
- A I don't remember if % suggested it or he suggested it.
 - Q Did that sum seem to be an appropriate formula to you at the time?
 - A Well, it seemed to be an appropriate range.
 - Q Did it seem to be an appropriate range to Mr. Cowett?
 - A As I remember, yes. There was no substantial disagreement on that.

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Did you discuss underwriting discounts, commissions to be paid to members of the selling group and dealer group?

We may have had a preliminary discustion on the but the important discussion on that was held in Geneva,

Now, after your meeting with Mr. Cowett in New York, did you discuss that meeting with anybody else in the Drexel team, for example?

Well, I'm sure I discussed it with the people who were going to Geneva and I probably discussed it with Mr. Berry, possibly with Mr. Miller.

Did you prepare a memorandum concerning that Q meeting?

I don't remember if I did. If I did, it's in the files.

MR. SILVERMAN: Mr. Schwartz, if there is such a memorandum, I call for its production.

MR. SCHWARTZ: We are not aware of any and we have already looked for documents of that nature. BY MR. SILVERMAN:

Did you discuss your meeting with Mr. Cowett with Mr. Murphy or Shearman & Sterling?

Yes, I believe I did.

Where were you when you discussed it with Mr. 0

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Either in New York or Geneva or on the plane. How soon after the meeting with Mr. Cowett did After that meeting with Mr. Cowett and before you left for Geneva, do you recall discussing that meeting with Mr. Cowett with Shearman & Sterling or any partners Well, the only person I might have discussed it with was Murphy and I don't recall whether I discussed it How about Price Waterhouse, did you discuss it Did you discuss it with any other persons in the brokerage or underwriting field other than Drexel people? Did you go to Geneva with Mr. Murphy? I did on several occasions and I can't remember whether I did the first time. I went five times during I see. 0

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When was the occasion of your first trip to

- Q Was there any arrangement made in advance that they were to go over to Geneva, the Price Waterhouse people would go to Geneva?
 - A Yes.

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- Q With whom did they make that arrangement?
- A With Drexel, Harriman & Ripley.

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208 A -66 Document 27 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions What was the second meeting? Well, between the time of the meeting I just mentioned and the next meeting, there were several -- when I say "several," perhaps two telephone conversations 6 with Edward Cowett in connection with the concept of 7 ISO going public. Did you place the calls or did Mr. Cowett 8 9 place the calls? I think I would have placed the calls. 10 A Where did you place them to? 11 Q 12 Geneva. Your phone records would indicate that; is 13 14 that correct? 15 A Yes. Now let's stick with meetings. When was the 16 second meeting that you attended outside of Canada? 17 Sometime towards the end of April I was in New 18 York on other business; I ran into Mr. Cowett at, to 19 the best of my recollection it was Arthur Lipper's of-20 fice. I had breakfast with him the following morning 21 at the Carlyle Hotel. 22 The principal reason for that meeting was not 23 to discuss the IOS underwriting, but it was in connec-

tion with ISM, if I can phrase it that way, or

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Trans-Global, the secondary, to discuss the upcoming dividend payment, quarterly dividend.

During the conversation we naturally discussed again the concept of IOS, Ltd. going public.

And the reason I say concept, is that up until that point, I had been led to believe that it was the intention to allow the subsidiaries of IOS, Ltd. to go public, as in fact one of them had, Trans-Global. And this was a complete change-around of abandoning that course and letting the parent go public right away.

We discussed at that time the general concept of the underwriting, because we thought it was a very exciting company. I urged him to give consideration to Crang & Company doing a Canadian underwriting. As I recall, I even tried to get the whole underwriting.

And I recall Cowett saying, well, of course we weren't big enough, and we were strictly Canadian, and this would be a world-wide underwriting.

To my knowledge, that is pretty well all that took place at that meeting. The main thing was that we urged him to allow us to take a portion of the under-writing, and do a Canadian underwriting.

- Q Who else was present at that meeting?
- A Just myself.

present.

How did you happen to be in Arthur Lipper's office that day?

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I have known Arthur Lipper ever since 1967, and anytime I was in New York, I dropped in to say hello to him; always do.

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Document 28 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions Werblow 2 Did he get in touch with you at a later time? Q 3 Yes. A How long after your luncheon meeting? 5 A couple of days later. A Did he get in touch with you on the telephone? 6 Q 7 Yes. A 8 What did he say to you? 0 He said that they were trying to arrange a meeting 9 A for us to meet with the treasurer of IOS and he reviewed 10 11 with us our availability. 12 Who was the treasurer of IOS? 0 13 Melvin Lechner. Did such a meeting take place between you and 14 15 Mr. Lechner? 16 Yes. Who was present at the meeting? 17 The other people present were Mr. on Glahn, Mr. 18 Stoddart, Mr. Biegler was in for part of the meeting, Mary 19 Ann Burge and Mr. Jack McDonough of Price Waterhouse were 20 at the meeting and there were some people from Shearman & 21 Sterling and some people from Drexel. 22

Q Do you recall who was there from Shearman & Sterling?

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	1	208A-72 Werblow 14
	2	A Yes.
	3	Q Can you identify the material that was given to
	4	you?
\bigcirc	5	A It was an information brochure that had been pre-
	6	pared by IOS personnel describing the company, a so-called
	7	blue book.
	8	Q Anything else?
	9	A Not that I recall.
	10	Q Did anybody else give you documents at that meet-
	11	ing?
	12	A No.
	13	Q Do you still have the information brochure in your
	14	possession?
	15	A I believe so.
	16	MR. SILVERMAN: Mr. Novello, I call for
•	17	its production.
	18	MR. NOVELLO: I will take that under ad-
	19	visement, Mr. Silverman.
	20	MR. SILVERMAN: And you will let me
)	21	know promptly?
	22	MR. NOVELLO: Yes.
	23	MR. SILVERMAN: Thank you.
	. 24	Q How long did the meeting last?
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of the June 30, 1969 financial statements of IOS.

Who asked the question?

I guess Price Waterhouse asked the question;

1	Werblow 31
2	Q Did you observe anybody at that meeting taking
3	notes?
4	A I don't honestly remember.
5	Q Following that meeting, what happened next?
6	A We met again that same day with Mr. Lechner to
7	discuss getting further information about IOS from him.
8	Q Where did you meet with Mr. Lechner?
9	A At 60 Broad Street.
10	Q Who was present at that meeting?
11	A I believe just Mr. von Glahn and I from Price
12	Waterhouse and Mr. Browning and Mr. Ambrose from Drexel and
13	I don't recall whether Mr. Murphy and Mr. Joyce or just Mr.
14	Joyce from Shearman & Sterling.
15	Q The purpose of the meeting was to get additional.
16	information from Mr. Lechner; is that correct?
17	A To arrange to get additional information from Mr.
18	Lechner.
19	Q What additional information did you arrange to
20	get?
21	A Financial statements on the various IOS entities
22	for the recent years.
23	Q What did Mr. Lechner say about providing you with
24	such information?

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1	A	He said that he would.
2	Q	Did you in fact receive such information?
3	A	Yes.
4	Q	How long after the meeting?
5	Α	I would say within 10 days we received some of
6	the infor	mation.
7	Q	From whom did you receive the information?
8	A	From people at IOS that Mr. Lechner had asked to
9	send it t	
10	Q Q	Was it sent to you, Mr. Werblow?
11		
12	Α	Yes.
13	Q	In New York?
14	Λ	Some of it was sent to New York.
	Q	What information was sent to you in New York?
15	A	Some financial statements of IOS and its various
16	constitue	nt companies for 1968 and prior years.
17		This also included financial statements on the
18	different	t mutual funds that they advised.
19	0	Did you maintain a file of that material?
20	A	Yes.
21	Q	Is that file still maintained at Price Waterhouse?
22	D A	Yes.
23		MR. SILVERMAN: Mr. Novello, I call for
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	II .	

MR. NOVELLO:

The same position.

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the production of the material that was sent to him.

Did you subsequently receive the remaining financial material that you had asked for at the last meeting that we have been discussing?

I am not sure if we received all of it.

Did you receive a second package of information from IOS?

I received one set of information on the IOS companies and I received another set of information on the mutual funds and my recollection is that additional information was received in Geneva or Ferney-Voltaire, but I am not sure whether we did get financial statements on the real old years for all of the smaller units within IOS. I think they might not have been able to find those.

The information on mutual funds, was that mailed 0 to you in New York?

Some of it was.

Did you maintain a file of that material? 0

Yes. I believe we just discussed that.

Well, there were two sets of financial material that you received, one on the IOS companies and the other on the mutual funds; is that correct?

Werblow

2	Q Did both sets of material come in one package?
3	A No, they came separately.
4	QAnd both came to you in New York; is that right?

- A Some material did come to me in New York.
- Q That material is maintained in the files of Price Waterhouse today; is that correct?

A To the best of my recollection, yes.

MR. SILVERMAN: Mr. Novello, I call for the production of that material.

MR. NOVELLO: I will take the same position, Mr. Silvermar. We will undertake to see if it exists and then I will take it under advisement as to what we will do from that point.

- Q I assume that when you received the material you read it and analyzed it; is that correct?
 - A Yes.
- O And you did so promptly after receiving the material; is that also correct?
 - A I am not sure what you mean by promptly.
 - Q Within a day or so.
 - A Definitely not.
 - Q Did you review the material in New York?
 - A I think I may have looked at some of it in New

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York	. I	would	thin	nk mos	t of	it	was	pretty	exten	sive	
was	look	ed at	when	we go	t to	Eur	rope.				
									Geneva	to you	in
1										va and	

I believe I --

in New York?

MR. SCHWARTZ: I object to the form of the question.

> MR. NOVELLO: Go ahead.

I believe I already stated that I did look at it A briefly in New York, but much of the analysis was made, to the extent it was analyzed, in Europe.

Did you discuss the material that was sent to you in New York with anybody else?

I object to the ques-MR. STRUVE: tion as ambiguous. Do you mean discussed in New York or material sent to him in New York.

MR. SILVERMAN: All right. Let me restate it.

Did you discuss the material that was sent to you in New York with any other person in New York?

I don't recall.

Was the material that you received in New York -did that material remain in New York or was it physically

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Document 29 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

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	Q	During	the	course	of	you	r inve	estigat	tion	, d:	id you
come	acı	3 any	info	rmation	as	to	whose	Telex	was	to	be
used	to to	ransmi	tinv	estment	ad	vice	?				

A I don't recall.

Q Were there any other subjects, discussed at the June meeting, other than those you have already testified to?

A There was some discussion as to where the Price Waterhouse personnel would work when we came to Geneva.

I guess housing accommodations were also considered.

Q Anything else?

A Not that I can recall.

Q After that June meeting, was there another meeting in New York that you attended?

A Yes.

Q When did that meeting take place?

A A few days thereafter.

Q Where was that meeting held?

A At 60 Broad Street.

Q Who was present at that meeting?

A That was a meeting at the offices of Drexel. I met with Mr. Harold Berry in his office with Grayson
Murphy and I believe Clark Ambrose and Bill Browning were

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also	at	that	meeting.

Q By the way, at the earlier meeting did you make a memorandum or take notes?

A I am not sure.

Q Is it your habit, generally, to take notes at meetings that you attend?

A Yes, it is.

Q And do you keep those?

A Yes.

Q Assuming you took notes at the June meeting that took place at 60 Broad Street, would it be procedure in your office to maintain a copy of those notes?

A Yes.

MR. SILVERMAN: Mr. Novello, if such notes were taken and are still in the custody of Price Waterhouse, I call for their production.

MR. NOVELLO: I will take that under advisement. I think the witness has indicated, of course, that he does not even know whether such notes exist.

MR. SILVERMAN: Well, I would appreciate being notified if they don't exist.

Q Now, the meeting at Drexel, who else from Price

1	Werblow 29
2	Waterhouse was there besides yourself?
3	A I believe I was the only one in attendance.
4	Q Have you named everybody that was in attendance,
5	to the best of your recollection?
6	A I am not sure if I named Mr. Berry. I said we
7	met in his office, but we met with him.
8	Q Who arranged that meeting?
9	A I don't recall if it was Mr. Browning or Mr.
10	Ambrose.
11	Q How were you notified of the meeting?
12	A By telephone.
13	Q When did the meeting begin?
14	A I don't recall.
15	Q How long did it take, approximately?
16	A Less than an hour.
17	Q What was the subject matter discussed at the
18	meeting?
19	A To advise Mr. Berry what had taken place at the
20	previous meeting, as he had not attended that meeting.
21	Q Who advised Mr. Berry as to what had taken place
22	A Mr. Murphy each of us filled Mr. Berry in on
23	points that we thought he ought to know about.
24	Q Do you recall what you told Mr. Berry?

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Document 30 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions Werblow

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copies of the reports that you have previously mentioned, prepared by Mr. Stoddart, Mr. von Glahn, Mr. Cameron and Mr. McDonough?

I believe so.

MR. SILVERMAN: Mr. Novello, I call for copies of those reports.

MR. NOVELLO: I will take that under advisement.

After the meeting in June with Mr. Lechner in which you requested certain financial information, what happened next?

I believe I described that we did get some of that information. I guess we had another meeting at which representatives of Arthur Andersen participated.

- Where was that meeting held?
- At 60 Broad Street, at Drexel's offices
- Who from Arthur Andersen was .present? Q

I guess they had three partners and one manager. I was there with Mr. Von Glahn from Price Waterhouse and I believe Mr. Murphy and Mr. Joyce from Shearman & Sterling were there.

0 What were the names of the Arthur Andersen partners?

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A Mat Tiffert was the manager. I believe Walter Ruegger and I don't recall Duncan's name from the New York office and the partner in charge of the IOS work, who was from Milan and Genoa -- his name doesn't come to mind at the moment.

Q How long did that meeting last?

A That was more than a full day meeting. It went into the night. I guess I did not -- I did not have an opportunity to finish who else was at the meeting. Maybe you are not concorned with that.

Q Please go ahead.

A I believe Mr. Browning and Mr. Ambrose were there from Drexel and I believe Mr. Sonne was in for parts of the meeting and I believe Jay Leary from IOS was there.

Q What was Mr. Leary's position --

A Walter Tenz was the partner in charge.

Q That was the partner in charge of the Milan office of Arthur Andersen?

A I did not mean to say the Milan office. He was in charge of the audit on Arthur Andersen's part. I know he was a resident of Milan and also in Geneva from Arthur Andersen.

Q What position did Mr. Leary hold in IOS?

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A I don't recall	his	exact	title.
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What subjects --- what topics were discussed at that meeting?

As I recall, the principal purpose of the meeting was to discuss what work Arthur Andersen could do in connection with the June 30, 1969 financial statements.

Any other topics?

I guess there were some discussion as to the length of time that it took to get out the 1968 financial statements of IOS; I guess a general discussion as to the new computer procedures that IOS had instituted with respect to salesmen's commissions.

Anything else?

I guess we talked about a time table with respect to an audit if Arthur Andersen were to undertake one.

Did Arthur Andersen at that meeting agree to undertake an audit?

No, they did not.

Did they reach a decision at that meeting that they would not undertake an audit?

MR. PETERSON: If you know.

I don't recall.

Did you take notes at that meeting?

24 25

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Ruegger

operations of I.O.S. and F.O.F. Prop?

A I really had no time because I had only had the assignment for less than a week.

Q Prior to becoming a partner in July of 1969, did you have any assignment relating to I.O.S., any of the funds managed by it?

A I did not.

You did no work and had no assignment, as far as F.O.F. Prop or I.O.S. or any of its managed funds or businesses are concerned prior to July 1, 1969?

A That is correct.

Q You attended the meeting at Drexel, Harriman's office in July of 1969; is that correct?

A I did; the morning session of that meeting, yes.

Q Do you recall what was discussed at that meeting?

A During the morning session the primary topic for discussion was whether, within the time frame established by I.O.S., Arthur Anderson could perform an audit of I.O.S. and its subsidiaries; as of June 30, as I recall, for purposes of including such financial statements in the offering document

Ruegger

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or in the offering documents. There were several, as I remember.

Q How many people from Arthur Anderson were in attendance?

A As I recall, four; Mr. Walter Tens of the Milan office who is also in charge of Zurich; Mr. Mathiew Tiffert, who is the senior manager of the I.O.S. engagement in Geneva; Mr. Wilbur Dunkin, who at the time was head of our audit practice in New York.

Q Was the New York audit officer responsible in any way for the I.O.S. financials?

MK. ZIRIN: What do you mean, responsible for the I.O.S. financials. I think you know the auditors' role is quite a different one from responsibility for the financials.

Q Was the New York office, and particularly the New York audit part of Arthur Anderson's office, involved in any way with any of the preparations of the I.O.S. financials that are contained in the Drexel prospectus, to the best of your knowledge?

A To the best of my knowledge, no one was.

It was connected with the New York office.

Q You said, you discussed the possibility of

an audit as of June 30; 1969; is that correct?

A Mr. Tiffert and Mr. Tens addressed themselves to the reasibility of such an audit in Geneva, at the request of Drexel, Harriman & Ripley.

0 What did they say about it?

A They said, within that time frame they could not perform such an audit.

Q What is the time frame?

A Between July and September 1, as I recall.

Q How long were you present at the meeting?

A Roughly from nine o'clock until lunch time, which I believe was 12:30.

Q Other than that conversation, what else took place?

were the possible alternatives to a full-pledged audit, where the auditor could issue something that was less than an audit or was feasible in that time frame; because I.O.S. felt that the representative of I.O.S. who was a Mr. Leery, as I recall, felt that it was important that the September 1 deadline be maintained in order to maintain the goodwill of their sales personnel and the credit with European banking circles, etc.

1	Ruegger 41
2	Q Who discussed the feasibility of a partial
3	audit?
4	A As I recall, the representative for I.O.S.
5	and possibly a gentleman from Drexel, Harriman &
6	Ripley. I don't recall, frankly, who raised what
7	questions and who answered them.
8	Q How long did that discussion take?
9	A Very brief discussions, since we, right from
0	the beginning, told them that we saw no alternative
1	to performing a complete audit or some type of
2	abbreviated audit.
3	Q You were present during three and a half
4	hours of that meeting?
5	A Yes.
6	Q 'So far, you have told us about two segments
7	of that meeting. One was; Arthur Anderson's statements
8	that it could not do a complete audit within the
9	time frame and that it was unwilling to do a partial
0	audit; is that correct?
1	A Correct.
2	Q What else was discussed?
3	A I frankly don't recollect any other topics
4	in the morning session.

Did you take notes?

be made; is that correct?

A Well, further discussions be held and yes, I would say it would be investigation, too.

- Q Further discussions and further investigations?
- A Right.
- Q Any other course of action determined at that informal board meeting?
- A I don't remember, and there are no minutes of that meeting, so I have no way of refreshing my recollection.
 - O With whom were the discussions to be?
- A The discussions were to be with Arthur Andersen, with IOS itself and with Price Waterhouse and Shearman & Sterling.
- Q was it determined at that board meeting who was to conduct the negotiations or discussions?
 - A I don't remember.
- Q Who on behalf of Drexel met with IOS to have further discussions in keeping with the action decided by the informal board meeting?
- A There was a meeting in New York at which I was not present, but there were, however, people there from IOS and Shearman & Sterling, Andersen and Price Waterhouse and possibly from Willkie, Farr.
 - Q Who set up the meeting?

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Coleman

- 1		
2	A	I don't remember. I didn't, because I wasn't
3	there.	
4	Q	Was it a Drexel person who did?
5	A	Oh, I would think sc, yes.
6	Q	Do you recall whether it was Mr. Sonne?
7	λ	I don't recall. It might have been Mr. Ambrose.
8	Q	What was Mr. Ambrose's job?
9	A	Mr. Ambrose was a vice president and director.
10	Q	Vice president and director?
11	A	And director and he worked in the New York office
12	in corpor	ate finance.
13	Q	Where was the meeting held?
14	A	It was held in New York, but I don't know just
15	where?	
16	Ω	How do you know about that meeting?
17		Because I had at least an oral report and perhaps
18	a written	report on it.
19	Q	Who gave you the oral report?
20	A	Either Ambrose or Sonne.
	Q	In your Philadelphia office?
21) A	I don't remember.
22	0	But it would have been either in Philadelphia or
23	New York	•
24	A	Yes.
25		

	and.	where	aia	you	see	the	written	report?
. Q	4110							

- report. I said there may have been a written report.
- Q What did Mr. Ambrose or Mr. Sonne tell you about that meeting?

THE WITNESS: Is it all right to answer that?

MR. SCHWARTZ: Yes.

A They told me that there was a considerable discussion as to what—to the extent to which Arthur Andersen could supply interim auditing figures on IOS, June 30th figures. There was a discussion as to what procedures Price Waterhouse might be able to advise Drexel to ask IOS to require the Andersen firm to perform in a post—audit review which would be over and above the normal post—audit review which Andersen would conduct to give us further assurance on the June 30th figures.

As I remember that meeting, it mostly had to do with accounting matters.

- Q Who was present from Arthur Andersen?
- A I don't know.
- Q Who was present from Price Waterhouse?
- A I believe a man by the name of Werblow was probably present. I wasn't at the meeting.
 - Q Would you spell that.

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Coleman

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- Q Do you know the reason for Willkie, Parr's presence?
- A I'm not sure they were present. I say it was possible they were present. They were counsel for IOS and would be involved in representing them in the public offering.
 - Q Who was present from IOS?
 - A I don't know.

MR. SILVERMAN: Mr. Schwartz, if, in fact, there was a written report made of that meeting, I call for its production.

MR. SCHWARTZ: We are not aware of any nor have we found any and we have looked.

BY MR. SILVERMAN:

- Q Now, approximately when did the first executive committee meeting take place at which the Sonne and Browning report were considered?
 - A I think it was in May.
 - Q Did you make your trip to the SEC in May?
- A I would have thought that would have been either the very end of May or early June.
- Q When was the second executive meeting, approximately?

posed by Price Waterhouse?

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I gave some considerations to them at the meetings I was involved in, yes.

Do you recall which items you gave consideration to?

I really don't. A lot of different items were discussed.

Was there any consideration given based upon the Price Waterhouse reports to Drexel Harriman not continuing with the offering?

Well, I think the feeling was that if the questions raised could not have been answered satisfactorily that they might not have continued but, in fact, they felt that they got satisfactory answers.

Who communicated the fact that satisfactory answers had been obtained to you?

I don't recall who communicated it but the two persons who were involved in it from the point of view of Drexel were the two I have mentioned, Mr. Coleman and Mr. Ambrose.

Do you recall any discussions in New York at which you were present and at which the questions raised by Price Waterhouse were discussed?

Yes. I attended one or two meetings, I think two.

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This was fairly late in the summer with Drexel people and with Price Waterhouse people.

Q Did you see drafts of reports prepared by Price Waterhouse people?

A Oh, I saw plenty of drafts.

Q You saw plenty of drafts?

A Yes.

Q And did you discuss these drafts with Drexel Harriman officials?

A Well, they were the subject of considerable discussion.

MR. SILVERMAN: I hand to the reporter five drafts of a memorandum entitled "IOS, Ltd.

Memorandum re More Important Matters Discussed with Representatives" et cetera, dated 9-6-69 and I ask that they be marked Murphy Deposition Exhibit 3A, B, C, D and E, respectively.

MR. FARLEY: Pardon me, Sidney, is
that four or five? You said four or five?

MR. SILVERMAN: Five. I'm sorry, you
are quite right. There are four.

(Four drafts of memorandum dated September 6, 1969 were marked Murphy Deposition Exhibits 3A,B,C and D for identification, as of this date.)

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	Document 31 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions
1	Werblow 57
2	A Yes.
3	MR. SILVERMAN: I call for its pro-
4	duction.
5	MR. NOVELLO: I will take that under
6	advisement, Mr. Silverman.
7	Q After the meeting with Arthur Andersen, was there
8	another meeting in New York?
9	A Yes, I believe there were other meetings in New
10	York.
11	Q When did the next meeting in New York take place?
12	A I believe the following week was the next meeting.
13	Q In whose offices?
14	A I don't think it was in anybody's office. It was
15	in a hotel room.
16	Q Which hotel?
17	A The Carlyle Hotel.
18	Q Whose suite?
19	A I don't know.
20	Q What was the suite number; do you recall?
21	A I do not.
22	Q Who was present at that meeting?
23	A It was a meeting with Mr. Coleman of Drexel. I
24	believe Mr. Ambrose and Mr. Browning were there. I am not

Werblow 58 1 sure whether Mr. Sonne was there, but I remember Mr. Murphy 2 was there -- Mr. Murphy of Shearman & Sterling. 3 Q Anybody else? A No. 5 I was the only one from Price Waterhouse. 6 Q Was anybody from IOS there? 7 Not at the meeting that I attended. A 8 Q Was it in a suite? 9 Yes. 10 Do you recall what floor? 11 I do not. 12 If I say it was on the 12th floor, does that re-13 fresh your recollection? 14 I am sorry, I have no recollection on which floor 15 it was. 16 Who was the host of the meeting? Q 17 I believe Mr. Coleman, but I am not sure if it 18 was Mr. Coleman's suite or Drexel's suite or which of the 19 Drexel people. 20 But you were under the impression that it was 21 a Drexel suite; is that correct? 22 Or one of the Drexel people had stayed there over-A 23 night.

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Q How long did the meeting last?

A It was a breakfast meeting, and as I recollect, not more than an -- maybe an hour and a half at the most.

Q What was discussed at that meeting?

A It really was a meeting to advise Mr. Coleman as to what happened at the meeting with the IOS people and Arthur Andersen.

Q Was anything else discussed at that meeting?

A Well, I guess everything that was discussed at that meeting had to do with the subjects that were discussed at the previous meeting and really coming up with some views on Drexel's part as to what they wanted to explore with IOS in connection with work that Arthur Andersen might do on the June 30, 1969 financial statements.

MR. SILVERMAN: Could I have the answer read, please.

MR. NOVELLO: And the question.

(The record was read.)

Q Did Mr. Coleman suggest what Drexel's views would be on Arthur Andersen's work on these June 1969 financials?

A I don't think so.

Q Did anybody else from Drexel suggest what Drexel's views should be?

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DATE	PLACE	TIME	ACTIVITIES
7/8	New York	5	Telephone conversation with Browning and Howe Conference at DHR with Berry Memo
7/9	•	6	Telephone conversations with Browning of DHR, Ambrose, McGovern
7/10	•	. 5	Conferences with Browning Herwagen, Sonne, Joyco, Voran, Nangle Letter to Moore re London printer
7/11	`•	10	Conference at D.H.R.
7/12	• 5:	2	
7/14	. .	4	Telephone conversation with Nangle (Geneva) Conferences with Cowitt at D.H.R. and Joyce
7/15	•	2	Telephone conversations with McGovern, Sonne, Berry, Kingston (Toronto)
7/16	Geneva	4	
7/17		9	
7/18		9	
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Document 32 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

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I believe so. 1

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Who was that?

I am not sure which of the other Drexel representa-

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tives there were the ones that stated the views, but I be-

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live one of them did.

What views were stated?

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That they wanted to discuss with the IOS executives trying to get Arthur Andersen to do as much work as possible

9

in connection with the June 30, 1969 financial statements.

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Is there anything else that you recall in the way

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of Drexel's views?

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No.

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Did you take notes of that meeting? Q

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I don't recall. A

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Do you recall anybody else?

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I don't remember. A

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Was there an assignment made that somebody would

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take notes of that meeting at the Carlyle?

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Not that I recall. I think the assignment of taxing notes was more at a formal kind of a meeting as opposed to

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a briefing as to what happened at a previous meeting.

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When did the next meeting in New York occur?

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I believe the next day we met with Mr. Ambrose at

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Drexel and I think Mr. Tiffert from Arthur Andersen also participated at that meeting. That meeting, I think, was at 60 Broad Street, at Drexel's offices.

- Q Who else from Price Waterhouse was present?
 I am assuming, of course, that you were present?
- A I was present and Ken von Glahn was present.
- Q Was anybody else present?
- A I think it was just the four of us.
- Q Did anybody take notes?
- A I believe Mr. von Glahn took notes for me.
- Q Did you retain a copy of Mr. von Glahn's notes?
- A I would think so, yes.

MR. SILVERMAN: Mr. Novello, I call for

production of those notes.

MR. NOVELLO: I will take that under advisement, Mr. Silverman.

Q What was the subject matter discussed at that meeting?

A As I recall, Mr. Tiffert was there to discuss more of the specifics as to what Arthur andersen could do in connection with the June 30, 1969 financials.

What did he say that Arthur Andersen could do?

MR. PETERSON: Mr. Silverman, I think

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Document 33 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

DATE	PLACE	TIME	ACTIVITIES
7/22	Geneva	10.	
7/23	New York	i	2 Memos re DHR .
7/24		4	Riders - IOS Telephone conversation with Conwell at Wilkie, Farr
7/25		5	Conference with Rubenfeld Telephone conversations with Joyce in Geneva and Feder Conference with Conwell at Wilkie, Farr
7/28		3	Memo SEC letters Telephone conversations with Ambrose and Sonne Conference with Lebow
8/1		6	Telephone calls to Pickering (Australia), Sonne, Gray (London), Nangle (Paris), Feder, Grest (Toronto), and Conferences with Lebow and Sonne Letter to SEC
8/2	Geneva	9-	
.8/3	•	4	

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1	Murphy 30
2	length of time as to whether you'd call them reports or
3	not.
4	Q But it was discussions involving the IOS
5	public offering, was it not?
6	A We certainly talked about the IOS public
7	offering.
8	Q That would be the major topic of any conversa-
9	tion with them, is that correct?
10	A That was what we talked about, yes.
11	Q Now, on how many occasions did you meet with
12	Mr. Conwell?
13	MR. SCHWARTZ: In any place?
14	Q In America.
15	A I think I met with him, as far as I can recall
16	twice.
17	Q Where did those meetings take place?
18	A In his office.
19	Q Who arranged the meetings?
20	A We arranged them between ourselves by phone.
21	Q Who asked for the meeting, you or Mr. Conwell?
22	A I am not sure.
23	Q When did the first such meeting take place,
24	approximately?
25	A The first meeting took place before we went to

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1	Murphy 31
2	Europe. We went to Europe on July 15th.
3	Q How long did the meeting last?
4	A Oh, I really don't remember.
5	Q More than a couple of hours?
6	A Oh, no.
7	Q Less?
8	A Yes.
9	Q Who else was present at that meeting?
10	A I don't recall.
11	Q Was there more than you and Mr. Conwill
12	present?
13	A I really don't recall.
14	Q What was discussed at the first meeting?
15	A Well, they had been counsel for somewhat over
16	four years for IOS and wanted to see if we could get any
17	information from them, if they had anything in their files
18	that we could look at that would help to educate us so
19	we'd be better prepared when we got to Geneva to work on
20	the prospectus.
21	Q Did Mr. Conwill indicate that the Willkie Farr
22	files on IOS would be available for your inspection?
23	A Yes.
24	Q Did an attorney or attorneys at Shearman &
25	Sterling inspect the IOS files at Willkie Farr?

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	Murphy 32
	MR. BUSCHMAN: Object to the form of the
3	question.
4	MR. SCHWARTZ: You may answer.
5	A Mr. Jowce looked at some files. I don't know
6	whether he did it at Willkie Farr's office or whether he
7	just borrowed some papers to look at in our own office.
8	Q But whatever it was, he did look at the
9	Willkie Farr files, either at Willkie Farr's offices
0	or at Shearman & Sterling's offices, is that correct?
1	A He said he looked at the files. I'm not sure
2	it's correct he looked at certain papers that Mr.
3	Conwill thought might be helpful to us.
4	Q What papers were those?
5	A I don't recall.
6	Q Did Mr. Jowce report to you on his examination
7	of those papers?
8	A I don't recall.
9	Q Do you know if any other attorneys at Shearman
20	& Sterling looked at files at the Willkie Farr files
21	that came from Willkie Farr, either at Willkie Farr or
22	at Shearman & Sterling?
23	A I don't recall any others.

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Do you know if Willkie Farr photostated and made available, and thereby made available to Shearman & COMMERCE REPORTING CO. 150 NASSAU STREET, NEW YORK, N. Y. 10038 - WOrth 4-3567

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Oh, no, not then.

Document 34 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

SPOTLIGHT ON BUSINESS

Bernie and His Billions

Bernard Cornfeld, 41, is a self-made emperor of international finance with a unique domain—and a life style to match. Bernie—not even his servants call him mister—wears Pierre Cardin jackets instead of business suits and silk foulards instead of ties. He rarely goes to bed before 4 a.m. and rarely rises much before noon. He lives in a swirl of people, boats, cars, planes, horses and parties. He is accompanied everywhere by a clutch of two, three or more young micro-skirted jet-setters. "He can be extraordinarily courteous at one moment," says a former associate, "and screaming

sells to Americans. But by last week, Cornfeld's genius had created the largest financial sales organization in the world. Now Geneva-based, IOS has 14,000 salesmen selling to more than 750,000 clients in more than 100 countries around the world. And Cornfeld's company has since branched into all the major areas of finance.

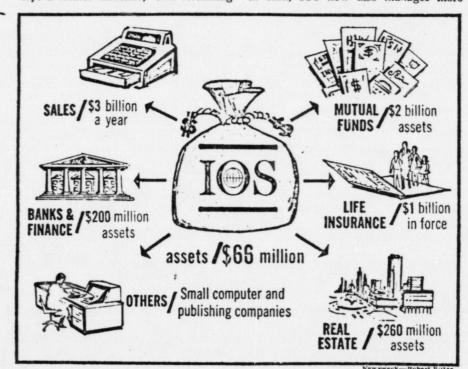
In addition to more than a dozen separate sales companies around the globe, which this year will sell more than \$3 billion worth of mutual-fund investment plans and generate more than \$1 billion in cash, IOS now also manages more comes from insurance premiums paid Kenyans themselves). IOS's Natural sources Fund, in a joint venture, it oil exploration rights to 29 million of Canadian Arctic land.

has put together this empire in that of the persistent antagonism of fue financial institutions, which dislike brash American sales techniques, many foreign governments, which like his organization's occasional beni of their laws. At one time or and IOS has tangled with the Bank of E land, the governments of Mexico, Brand the U.S. Securities and Exch. Commission. Cornfeld has to be, proved a boon to U.S. authorities different guise: by raising funds foreigners overseas and pranping the into U.S. stocks, IOS and its subsidi this year will account for an inflow. least \$500 million on the nation's ance of payments.

To overcome his governmental p lems, and to impress his far-flung ci with the substance of his organization Cornfeld has hired politically and & cially prominent people by the hair. James Roosevelt, FDR's son and a mer ambassador to the U.N., serve-IOS's emissary in relations with for-governments. Erich Mende, former to Chancellor of West Germany and of that nation's third-largest polynarty, heads IOS operations in the German market. Pat Brown, former fornia governor, and Count Bernad one of Sweden's most famous name grace various IOS subsidiary bor Indeed, among other world personal who have been invited to discuss rectorships, each of which could by emoluments of \$250,000 annually, a last year's defeated U.S. President candidate, Hubert Humphrey, and \$ mer Supreme Court Justice Arthur (3 berg. Both are scheduled to visit Gene this week.*

Copycats: Beyond the sheer size Cornfeld's achievement is the impachas had on foreign financial markets a pioneering success has spawned be than a hundred U.S. and foreign a tators, though IOS still does more it tators, though IOS still does more incombined. The imitators deal in extending from real estate to copyclic the combined of the state of the sta

The improbable creator of all this sometimes melancholy little backwho lives much of the week with Russian-born mother in Villa Elaz,



Leverage: Millions in the middle control billings around the world

like a banshee the next." Cornfeld rarely answers his mail. A master salesman, he has nonetheless broken off a pitch in mid-flight, turned his back on his astonished prospects—and scuttled off in pursuit of a lizard that happened by. "He's a man-child," says an acquaintance.

Only a great novelist would dare create such a bizarre character, and certainly no novelist would dare endow him with the success that Bernie Cornfeld has achieved

Not quite thirteen years ago, the 5-foot 5-inch Cornfeld, a onetime social worker from Brooklyn who had become a mutual-fund salesman, took a vacation a mutual-fund salesman took a vacation france. He decided he could peddle funds to Americans stationed overseas and launched a one-man company called Investors Overseas Services from a two-room apartment in Paris. IOS no longer

than a dozen mutual funds of its own. The two largest: Fund of Funds, a fund that buys the shares of other mutual funds, and International Investment Trust. IOS also owns the International Life Insurance group, with subsidiaries in six countries; ten banks and finance companies scattered from the Netherlands Antilles to Luxembourg; a group of realestate companies that are building hotels, offices and apartments from Miami to Munich, and a couple of small publishing enterprises (including Switzerland's only English-language newspaper) plus a data processing firm.

IOS funds were once invested solely in U.S. stock markets. But now the investments range almost as widely as the company's sales force. This September, an insurance subsidiary will finance a major office building in Kenya (the money

^{*}Investors Diversified Services, the larged is mutual-fund organization, also wants to him for the people. It has approached Hamet fichirman of the Securities and Exchange Consistent, about becoming president of its nutual formation or the desinates and the offer to The Washington late last week, saying "negotiations are still or

SPOTLIGHT ON BUSINESS

mansion on Lake Geneva that Napoleon reportedly built for Josephine. The previous owner was the late Pierre Cartier, the jeweler. Cornfeld uses his 40-room, twelfth-century castle (a 40-minute drive into France), his Paris apartment and his London house on Belgrave Square for weekends, visits and parties. The London Daily Telegraph's Kenneth Fleet calls him a "twentieth-century revolutionary in the sphere the twentieth-century cares most about-money."

century cares most about—money."

This year's decline in the U.S. stock market, where the bulk of Comfeld's major funds is invested, has caused some slippage in these funds per share assets. But it hasn't slowed Comfeld's sales growth. "We have a very high degree of diversification not only in the securities markets. We have holdings all over the world so that when, for example, the American market is substantially down, as is now the case, we are making money in another part of the world, such

pines). Directors are also getting details of a new joint mutual-fund venture in France with the prestigious Rothschild bank. And Bernie has plans for a "People's Fund," which will be launched next March and be sold in denominations as low as 50 cents at a time through factory payroll windows.

As the Rothschild deal indicates, institutions that might not have touched Comfeld two years ago are now lining up to do business. Contemptuous European bankers who used to grimace at the mere mention of Cornfeld now even drop his name. One erstwhile prominent Dutch detractor who once numbered him among the robber barons of the investment business now brags: "I had dinner with Bernie last week."

Good Bet: "If someone had told me that Martin Brooke was associated with IOS two years ago I would have bet any money be was wrong," says a London banker. Today Martin Brooke of

cluding, interestingly enough, Communist ones. [Some Communist nationals who are stationed abroad with access to hard currency buy IOS plans on the sly.] We're in the business of literally converting the proletariat to the leisured class painlessly and without violence. It's revolutionary and goddam exciting."

Whatever cynics might say, Bernie preaches the faith constantly. And it does motivate his hard-selling troops. Some time ago a lone IOS representative scouting for business in Africa received information about "hundreds" of Europeans living on a plantation in the heart of the Congo. He journeyed for five days—first by plane, then up the Congo River by paddle steamer, then by jeep. When he finally got there he found only three families. He still sold one \$50,000 and one \$25,000 investment plan.

On another occasion a European sales manager was wondering where to go next. Bernie remembered reading





Sales chief Cantor (left) and lawyer Cowett: \$10 million to \$20 million apiece for making Bernie's business work

as our recent sale of a titanium mine in South Africa."

The stock slump has not damaged consumer acceptance of the new projects that Bernie churns out either. In May, IOS hoped to raise \$50 million for a new, high-risk fund called Venture International—and wound up taking in \$98 million. havestment Properties International, a mutual fund to invest in real estate, was projected at \$50 million in sales when in unched last month—but brought in \$150 million from eager investors. Confeld turned back \$50 million of the money because, he explains, "it was more than we can efficiently utilize."

The Board: Fifty directors of IOS and its subsidiaries are meeting in Geneva this week. Among the new projects that they can review, reports Newswerk Senior Editor Arnaud de Borchgrave, are a mutual tund that will invest solely in film and entertainment ventures and half a dozen more new funds that will invest only in the countries in which they are sold (including planned funds for Australia, Sweden and the Philip-

Guinness Mahon & Co., an impeccable London merchant bank, is on Cornfeld's board of directors.

Cornfeld's special genius is as a salesman. And his ability to sell his 20,000 employees on the conviction that IOS is saving capitalism and improving la condition humaine is perhaps his greatest single teat. Cornfeld turns money-making into an evangelical crusade. And everyone in the company-from the chic receptionists to the 103 executives who have become millionaires-passionately endorses Bernie's gospel.

It wasn't always this way. As a kid in Brooklyn, Bernie collected nickels and dimes for the Abraham Lincoln Brigade fighting in Spain and later thousands of signatures for a Norman Thomas-for-President petition in 1948. Now, though Bernie still professes to be a radical, his socialism has turned into a doctrine he likes to call "people's capitalism."

"We have given people's capitalism meaning to hundreds of thousands of people," says Bernie. "Just our own clients will soon number 1 million . . . in-

something in the National Geographiche gets a lot of ideas from the Geographic—about hundreds of scientists gathering in Christchurch, New Zealand, for some geophysical activities. "Bound to be well-paid guys there," advised the boss. The salesman found only one scientist—a poorly paid one—at Christchurch. He called Bernie. "Why don't you go on to Sumatra?" suggested Bernie, who had seen a picture of American oil-drilling operations on the island in another issue of the Geographic. The manager proceeded to Indonesia and discovered huge Levittown-type communities with hundreds of American families. He wrote more than \$1 million worth of business in three weeks.

The Plan: IOS salesmen have sold plans to Eskimos, African tribal chiefs and Nepalese sherpas in their neverending quest for more business. The minimum, \$3,000 ten-year investment plan calls for a monthly payment of \$25. The average plan sold is for \$50 a month. The typical buyer is a middle-class Laropean or-in Asia, Africa and

0 66A

SPOTLIGHT ON BUSIN'S



Mende: In place in Germany

South America-a European working in middle management for an international

company.

The salesmen, an alarmingly competitive bunch work on straight commission plus special-incentive bonuses paid in IOS stock. The equity ownership gives everyone a huge stake in the company's continued success. It has also made hundreds rich.

Roy Kirkdorfler, for example, joined IOS as a salesman in 1959 after three years in the U.S. Air Force. His annual production soon hit \$500,000 and today Kirkdorfler, with prematurely white hair at 35, is president of IOS in Great Britain. He lives on millionaires' row in Hampstead and is worth several million dollars in stock. "No one," he says, "is ever treated like an employee. [Bernie] keeps us inspired."

With stock options and the head man providing the inspiration, two aides run the day-to-day operations:

Lawyer Edward M. Cowett, 39, bearded, and with the intense look of a leftwing intellectual. Cowett has been in the eye of every legal storm, and frequently is accused of being more concerned with the letter than the intent of law. He is soft-spoken but tough. At Harvard, he backed a truck up against the room window of a schoolmate with whom he was feuding and covered the floor with concrete. His worth after ten years with IOS? "Between \$10 and \$20 million," he says.

"Sales director Allen R. Cantor, 37, who also wears a beard and who could pass more easily for a professor than president of one of the hottest sales organizations in the world. Following graduation from Brooklyn College (political science, law), Cantor went straight into IOS, worked the Middle and Far East, sold millions in fund shares and moved quickly to the top. Shy and modest, a collector of rare books, he, too, is worth "between \$10 and \$20 million."

Nobody in the outfit, of course, is

worth what Bernie is—something around \$100 million. And Bernie lives like a modern pasha. He doesn't smoke and usually drinks Coke. Cornfeld's complaint is women. "Variety is the spice of life," says Bernie. "Besides, marriage is too time-consuming." And he indulges an insatiable yen for the luxuries: the planes (a Falcon jet, a Convair turboprop and a Jet Commander); the cars (Rolls-Royce, custom Lincoln, Caddy, Sting Ray), yachts (a houseboat and a Riva speedboat), a thoroughbred racing stable—the works. He is even playing a latter-day Professor Higgins with two Eliza Doolittles. Cameras, drama coaches and movie directors were all ensconced at the Château de Pelly last week teaching two young starlets, Vicki Principal and Kathy Dix, how to act.

A recent afternoon in Bernie's life:
He is at the Villa Elma trying to get
away to the airport for a 40-minute
flight to Paris. He is due to speak at the
European Institute of Business Adminis-



Humphrey: In the wings?

tration in Fontainebleau that night. Ken Klein, a long-haired aide wearing mod clothes, is standing by with pad and ballpoint. Halt a dozen men from as many countries hover in the background. Bernie is discussing a line of products to be launched by Oleg Cassini, the designer and an intimate triend, and Guy Laroche, the French couturier (Cornfeld is financing a new Laroche houtique-cum-discothèque in New York). Bernie glances at a list of suggested names for a new after-shave lotion. "No, no," he says impatiently, "that won't do. We need a zippy word, something with punch and sex, a word that's got bang... that's it [the voice goes an octave higher]... BANG."

Bye-Bye: More low-voiced consultations. Then Toshi, Bernie's man Friday, helps him into the inevitable Cardin threads. The Rolls-Royce is waiting. Three lissome girls are already in the back seat. Bernie wanders across the

lawn to pet his two tame ocelots. "Tell my mother," he says to Didi, his Cerman secretary, "that I'll be back tomorrow."

my mother, he says to Did, his German secretary, "that I'll be back tomorrow."

The Rolls is crunching along the gravel driveway when Toshi runs from the house and shouts, "Urgent call from New York." Twenty minutes later Cornfeld is finally airborne in his twin-engine Falcal jet.

Falcon jet.

One TV set (there are two) is show, ing "Laugh-In." Bernie has Stateside shows taped for his convenience. But no one is watching. Bernie plays backgammon, his favorite pastime, with a French Canadian millionaire friend. A velvet-suited English director, hair covering most of his face, is trying to persuade Cornfeld to produce a movie denouncing Scientology, which he calls "the world's most evil force." "If it's all that evil," asks Cornfeld, "how come so few people have ever heard of it?" He loses interest. Another passenger pitches Bernie on a scheme to sell children's movies to local PTA's. No dice.

Chopper: Bernie suddenly realizes that he'll be late. "Tell the pilot to radio Le Bourget to have a chopper standing by." But it's drizzling in Paris and the visibility is too low. No helicopter. He goes on in Fontainebleau at 8:30 p.m.—three hours behind schedule. The students are not friendly. His costume draws some sneers. But very soon everyone is mesmerized by his oration on what Cornfeld-style capitalism is all about. He keeps the talk short, fifteen minutes, and then throws the meeting open to questions. He impresses them. The students, who had come to needle, give him a standing ovation.

Bernard Cornfeld was born in Istan-

Bernard Cornfeld was born in Istanbul on Aug. 17, 1927. His Rumanian born father was a locally prominent film distributor and theatrical impresario. Bernie was 5 when the family moved to the U.S. and settled in Providence, R.I. Two years later, his parents separated and he was taken to Palestine by his mother, only to return with her to the



Roosevelt: On the road

Newswee

a year later. Bernie attended PS then 225 and Abraham Lincoln in Brooklyn.

t 12, his allowance was 10 cents a He couldn't afford the trolley to school. Working nights in a fruit he saved up for a bike. On weekhe sold lollipops at Coney Island. Suessing Game: Then came his first " business deal. With a school friend, Bine opened an age-guessing stand at They Island. "We bought a PA system

For a range of prizes," he recalls. "I

Velember the \$1 prizes cost us 12 cents. also worked up a 'scientific analysis respersonality' act. We used to guess urights as well as ages. By the time I will 16 I was making \$150 a week." punie joined the merchant marine and nteled from 1945 to 1947 as a ship's ser. He then went to Brooklyn Colto e, graduated in three years, and took master's in social work at Columbia. reas first full-time job came in '52 as a o ghborhood youth organizer in Philatarelphia. At 25, he was making \$6,800 indiear. He began selling mutual funds on side. By his own admission, he did ter side. By his par do very well.

he Then came the turning point in Bertos is life—the vacation trip to Europe in
1 e1655. Bernie acquired an old Chrysler
1 ion neetber of \$300, and was soon ped1 is mutual funds door-to-door in
1 figure. His sales were sensational. Ber1 meter had stumbled on virgin paydirt. And
2 tethin a couple of years he was hiring

next ry salesman he could recruit.

Jouch and Go: Bernie's meteoric rise
I from these beginnings has had its premarkrious moments. Many countries had
ent ever seen mutual funds before, had no
ores ws regulating them and grew irate
overly cranky when Bernie's hard-selling
(ce, plesmen arrived. Still more countries
partid tight controls on the export of local
by lipital. Bernie's legions, on the other
to lind, were not always fastidious in obgring the letter of these exchangeontrol laws.

Then too, there was the problem of xes. But here, lawyer Cowett proved a master at exploiting tax havens. Cowett as constructed a web of 100 different S subsidiaries, many incorporated in a ch places as Luxembourg, the Balamas, Ilong Kong or Panama. IOS has been so successful in sheltering its intome that of about \$33 million in profits farned by the group of companies last Car, taxes came to less than \$3 million. There would have been a tax bill of bout \$16.5 million if IOS were incorporated in the U.S.) "To pay more in the taxes than you have to," says Bernie, would be the height of stupidity."

Handling complaints stirred up by

Jernie's sales force around the world as been a major IOS preoccupation.

The American SEC complained about former-cutting in IOS's dealings on U.S. securities markets and charged that IOS was illegally selling unregistered securities to U.S. investors. The SEC was par-



Bernie and pet at Villa Elma: 'Tell mother I'll be back tomorrow'

ticularly frustrated by the fact that IOS was operating in ways that would have been illegal if IOS had been a U.S.-based company. IOS replied that it complies ("no more, no less," as Cowett puts it) with the laws of countries in which it is active. It disposed of the other SEC complaints by severing all of its ties to the U.S. and to American investors.

Bernie has been ingenious in dealing with countries that complain that IOS helps tax dodgers. He has dispatched former U.N. ambassador James Roosevelt with a disarmingly realistic argument. The rich minorities of most countries have always had ways of secreting their assets from tax collectors anyway, Roosevelt points out. Therefore, he argues, let IOS introduce a local mutual-fund plan that will invest at least half of all locally raised funds in local projects and put the other half into U.S. stocks or other foreign assets.

A Big Hit: It is the argument of half a loaf. In some countries, indeed, IOS even promises to reinvest all funds collected. Nations have bought Roosevelt's arguments wholesale. Kenya, Italy, Sweden, France and half a dozen other countries now have national funds. "The nationalfund approach," says Bernie proudly, "enabled many countries finally to get money out of mattresses and into productive endeavors."

It has also, of course, eased an increasing squeeze on IOS and its freewheeling salesmen by various governments. There are some staid financial institutions that say they still don't like Bernie's operations. As the head of one major international brokerage house put it last week. "We wouldn't like to do business with him." But, as a European manager for a New York-based bank also said last week, "It is getting increasingly hard to operate over here and not do business with Cornfeld. He's too big."

On his brassy past record, Bernie wastes little one worrying about who

does, and does not, think him proper. Sheer size has a way of enhancing anyone's reputation. Not to mention his clout. And come September, IOS will be a whole lot bigger. It plans then to more than double its current net assets (\$66 million) by selling a fifth of its stock, to European and Canadian investors, for an expected \$100 million. What will he do with all the money?

Bernie has dozens of ideas. He personally last week made a \$1 million bid for a tract of land near the IOS computer center at Nyon in Switzerland. He intends to build a university. For IOS, Bernie is thinking of buying big jets to fly customers to the vacation centers that his real-estate subsidiaries are building in Spain, the Bahamas and Florida. He also talks of launching a worldwide credit card system, a travel agency, a communications empire featuring film studios and television stations. And then, of course, Bernie still sees vast opportunities in mutual funds.

"Worldwide People's Capitalism is our goal," Bernie says evenly. "And when you see what we have done in ten years, there is no reason to believe the goal utopian."

CONSUMERS:

Credit for the Poor

"Poor people shop where they can get credit," points out Washington, D.C., welfare-rights worker Leonard Ball. That usually means the high-mark-up, high-interest E-Z Credit Store down the ghetto street. The framers of the Truth-in-Lending Act, which took effect on July 1, hoped that the ghetto merchant's forced disclosure of simple annual interest rates as high as 33 per cent on consumer hard goods would send the poor downtown, where interest runs 18 to 20 per cent. But many-particularly those on welfare-simply don't qualify for cred-

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Document 35 of Appendix II to Plaintiff's Memorandum of
Law in Opposition to Defendants' Motions

DREXEL HARRIMAN RIPLEY, INCORPORATED

Executive Committee

Minutes of Regular Meeting

July 30, 1969

A Regular Meeting of the Executive Committee was held this day at 11:00 A.M. in the New York Office.

There were present: Messrs. Coleman, Cluett, Morehouse, Bell, Cheston and Guernsey. Mr. McCrone also attended as Secretary in Mr. Parker's absence.

Mr. Coleman reported on the status of the I.O.S. underwriting.

	300
	Document 36 of Appendix II to Plaintiff's Memorandum of
	Law in Opposition to Defendants' Motions
1	Knowlton ·51
2	Properties Company, Limited?
3	A No.
4	Q Have you ever heard of that security before,
5	Revenue Properties Limited?
6	A No.
7	Q Do you recall attending any meetings in New
8	York with any other dealer-managers of the I.O.S. offering
9	prior to the closing on October 15, 1969 and in 1969
10	and related to the I.O.S. public offering?
11	A I vaguely recall meeting Mr. Coleman on one
12	occasion in New York.
13	Q Where did you meet him?
14	A I believe at his office.
. 15	Q Who else was present?
16	A I don't recall.
17	Q What was the purpose of the meeting?
18	A I don't recall.
19	Q Who arranged it?
20	A I don't recall.
21	Q But you do recall that it involved the I.O.S.
22	public offering in some way?
23	A Yes.
24	Q Was it prior to your trip in Geneva in July
25	of 1969? .

11	
2	A I believe it was after my trip.
3	Q Did you discuss Smith, Barney's participation
4	in the underwriting?
5	A I don't recall.
6	Q Did I ask you if you recall who else was pre-
7	sent?
8	A Yes, you did.
9	Q And you don't?
10	A I don't know
11	Q Did you make a memorandum of that meeting?
12	A No.
13	Q Do you recall any meetings with any United
14	States Attorneys in 1969 pertaining to the I.O.S. public
15	offering?
16	MR. ZIREN: What do you mean by
17	United States Attorneys?
18	MR. SILVERMAN: I see what you mean.
19	Q I don't mean Government attorneys, I mean
20	American lawyers in New York.
21	A I met Mr. Grayson Murphy at on at least one
22	occasion. I recall he was counsel for the underwriters.
23	Q Where did you meet with Mr. Murphy?
24	A And I don't recall whether that was in Geneva
25	during my visits there in July or subsequent to that in

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Document 37 of Appendix II to Plaintiff's Memorandum of Law in Opposition to Defendants' Motions

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DRRG

MSG 40
KNOWLTON 15TH FLOOR
VAN GROTESTIJN OF HESS AND HOPE JUST
CALLED JDEL TO SAY THAT THEY RECEIVED A CALL
FRON IOS INVITING THEM INTO THE SELLING
GROUP OF THE FORTHCOMING ISSUE.
THEY WERE TOLD BY IOS THAT WE WERE IN THE
MANAGEMENT.
NO OTHER NAMES WERE MENTIONED.
DONT KNOW HOW YOU LEFT THIS MATTER WITH
COVETT BUT MESS AND HOPE WERE YERY
SURPRISED AT THE CALL FROM IOS.
ALSO RUMORS ARE BEGINNIG TO CIRCULATE
THAT WE WILL BE IN THE MANAGEMENT OF
THIS ISSUE.

WOULD APPRECIATE YOUR ADVICE.
VESEL PAR

particularly to the statement which says, which was an

obvious concession to your telephone call, and I ask you

Knowlton

47

1

2

3

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208 A-116 Knowlton 1 Now, it refers to a meeting between you and 2 Mr. Cowett, does it not? Yes, I assume it refers to one of the meetings 3 I had with Mr. Cowett in Geneva in July prior to the date 4 5 of this message which is August 7th. 6 Did you reply to that Telex, do you recall? 7 I don't recall. 8 I direct your attention to Knowlton Exhibit 13 and I ask you first did you attend a meeting in Paris of 9 10 the managers referred to in Exhibit 13? 11 Excuse me, what is the date of this? 12 I can't make it out on my copy. 13 I can't make it out on MR. KING: this copy either. We will try to get the date and 14 15 supply it to you. 16 Thank you. MR. SILVERMAN: 17 MR. KING: What is the question? 18 Whather he attended MR. SILVERMAN: 19 a meeting in Paris of managers. I don't recall attending any meeting of the 20

21

22

23

24

25

managers in Paris.

Do you recall any discussion in New York revolving around "corporate point involved?" No. · A